UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2001/14/Add.1
9 November 2000

ENGLISH, FRENCH AND
SPANISH ONLY
Original: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 11 (a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF TORTURE AND DETENTION

Opinions adopted by the Working Group on Arbitrary Detention

The present document contains the opinions adopted by the Working Group on Arbitrary Detention at its twenty-sixth, twenty-seventh and twenty-eighth sessions, held in November/December 1999, May 2000 and September 2000 respectively. A table listing all the opinions adopted by the Working Group and statistical data concerning these opinions are included in the report of the Working Group to the Commission on Human Rights at its fifty-seventh session (E/CN.4/2001/14).

CONTENTS

Page

Opinion No. 24/1999 (Haiti) 4

Opinion No. 25/1999 (Colombia) 7

Opinion No. 26/1999 (Spain) 9

Opinion No. 27/1999 (Uzbekistan) 12

Opinion No. 28/1999 (United Kingdom of Great Britain and Northern Ireland) 15

Opinion No. 29/1999 (Sudan) 18

Opinion No. 30/1999 (Nigeria) 24

Opinion No. 31/1999 (United States of America) 28

Opinion No. 32/1999 (United States of America) 34

Opinion No. 33/1999 (United States of America) 38

Opinion No. 34/1999 (United States of America) 42

Opinion No. 35/1999 (Turkey) 46

Opinion No. 36/1999 (Turkey) 53

Opinion No. 1/2000 (Nigeria) 56

Opinion No. 2/2000 (Belarus) 57

Opinion No. 3/2000 (Rwanda) 58

Opinion No. 4/2000 (Peru) 61

Opinion No. 5/2000 (Chile) 63

Opinion No. 6/2000 (Pakistan) 64

Opinion No. 7/2000 (Algeria) 66

Opinion No. 8/2000 (China) 67

CONTENTS (continued)

Page

Opinion No. 9/2000 (Peru) 71

Opinion No. 10/2000 (Peru) 73

Opinion No. 11/2000 (Peru) 75

Opinion No. 12/2000 (Japan) 78

Opinion No. 13/2000 (Pakistan) 80

Opinion No. 14/2000 (China) 83

Opinion No. 15/2000 (Bahrain) 86

Opinion No. 16/2000 (Israel) 90

Opinion No. 17/2000 (Israel) 94

Opinion No. 18/2000 (Israel) 97

Opinion No. 19/2000 (China) 99

Opinion No. 20/2000 (Syrian Arab Republic) 101

Opinion No. 21/2000 (Syrian Arab Republic) 104

Opinion No. 22/2000 (Turkey) 108

Opinion No. 23/2000 (Haiti) 112

Opinion No. 24/2000 (Lithuania) 119

Opinion No. 25/2000 (Myanmar) 124

Opinion No. 26/2000 (Lao People's Democratic Republic) 127

Opinion No. 27/2000 (Peru) 131

Opinion No. 28/2000 (China) 134

OPINION No. 24/1999 (HAITI)

Communication addressed to the Government on 14 January 1999

Concerning Frantz Henry Jean Louis and Thomas Asabath

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regrets that the Government did not reply within the 90-day time limit.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the source, two Haitian nationals, Frantz Henry Jean Louis and Thomas Asabath, were arrested on the night of 23 July 1998, without an arrest warrant and without being caught in flagrante. They were taken to the Petionville police station and then to the Petionville civil prison.

6. Mr. Jean Louis and Mr. Asabath were held in custody until 9 October 1998, without being brought before an examining magistrate, in violation of article 26 of the Haitian Constitution. Pursuant to an order issued by Commissioner J.-A. Brutus on 31 July 1998, or eight days after their arrest, they were imprisoned on charges of illegal possession of firearms and conspiracy. The source doubts the authenticity of the order, as no arrest warrant had been issued against them, and suspects it to have been "made up after the event" to justify the arrest.

7. In an order dated 5 August 1998, the senior judge of the Port-au-Prince court of first instance stated that the arrest of Mr. Jean Louis and Mr. Asabath had been "illegal" and their detention "improper and arbitrary", and ordered their immediate release. Commissioner Brutus refused, however, to carry out the order. On 12 August 1998, he was served notice to comply with the order. Finally, on 9 October 1998, or two months and four days later, the public prosecutor's office authorized the order to be carried out.

8. As soon as they were released Mr. Jean Louis and Mr. Asabath were re-arrested, while they were still on the premises of the Petionville police station. This time they were charged with "illicit drug-trafficking on Haitian territory", according to an arrest warrant which was issued by an examining magistrate, but of which they were never informed, contrary to the provisions of article 24.3 of the Constitution.

9. On 30 November 1998, the arrest warrant against them was again withdrawn by the examining magistrate. The same day, the Secretary of Public Security, Mr. Robert Manuel, again intervening directly in matters within the exclusive remit of the judiciary, summoned the examining magistrate and the Government commissioner and ordered them not to carry out the decision to withdraw the arrest warrant. According to the source, the decision to re-arrest them had been taken by Mr. Manuel, and it had been agreed to make a pretence of releasing them and then detain them on other grounds.

10. According to the source, the Secretary's interference in the execution of judicial decisions seriously undermines the independence of the judiciary and encroaches on its authority. According to the source, by assuming powers not vested in him the Secretary deliberately violated Haitian constitutional and legal norms and the fundamental norms and principles of the international human rights conventions ratified by the Haitian Government.

11. Based on the foregoing, the Working Group concludes that the above-mentioned individuals were arrested without a warrant on 23 July 1998 and remanded in prison custody for a period which lasted until 9 October 1998, without being brought before a judicial authority, in violation of article 26 of the Haitian Constitution, which stipulates that "No one may be kept under arrest more than forty-eight (48) hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision." The detention is also contrary to article 10 of the Universal Declaration of Human Rights, article 9, paragraph 4, of the International Covenant on Civil and Political Rights and Principles 9, 10 and 11 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. In the opinion of the Working Group, there has been a non-observance of the international standards relating to a fair trial which is of such gravity as to confer on the deprivation of liberty of Frantz Henry Jean Louis and Thomas Asabath an arbitrary character (category III).

12. In addition, the above-mentioned individuals remained in detention despite a decision by a judicial authority to release them, on two occasions: the first, from 5 August 1998 to 9 October 1998 and the second, from 30 November 1998 onwards. In both cases their detention is also arbitrary because it cannot be justified on any legal basis (category I).

13. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to put an end to the impunity enjoyed by those responsible for the deliberately arbitrary detentions mentioned above (Commission on Human Rights resolution 1999/34).

Adopted on 26 November 1999

OPINION No. 25/1999 (COLOMBIA)

Communication addressed to the Government on 4 March 1999

Concerning Olga Rodas, Claudia Tamayo, Jorge Salazar and Jairo Bedoya

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having promptly provided the information requested.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The Working Group notes that the Government concerned informed the Group that the above-mentioned individuals are no longer being detained. This information was transmitted to the source, which did not deny it.

5. The Group considers that the communication refers to the deprivation of liberty of four persons, by an illegal paramilitary group which has committed similar acts in Colombia, and not to detentions carried out by regular State bodies, which are the actual subject of its mandate as set by Commission on Human Rights resolutions 1991/42 and 1997/50. Rather, it refers to abduction and hostage-taking. The Group lacks competence to investigate this type of deprivation of liberty.

6. Furthermore, the persons covered in the communication were released a few days after being abducted.

7. However, in fulfilment of Commission on Human Rights resolutions 1999/29 (hostage-taking) and 1999/34 (impunity), the Group, while declaring the case closed, considers that it is necessary:

(a) To bring the case to the attention of the Commission on Human Rights;

(b) To request that the Government of Colombia should conduct a judicial investigation of the events, which should be given the full cooperation of the relevant State bodies, with a view to punishing those responsible.

Adopted on 26 November 1999

OPINION No. 26/1999 (SPAIN)

Communication addressed to the Government on 21 June 1999

Concerning Mikel Egibar Mitxelena

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having provided the information requested promptly and in full.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The Working Group welcomes the cooperation of the Government, which promptly acceded to its request.

5. According to the complaint and information subsequently provided by his lawyer, Mikel Egibar Mitxelena was detained on 10 March 1999, at his home, in the presence of his wife and son, and remained in police custody, with judicial authorization, through 15 March, when he was transferred to the competent court for inquiry proceedings and trial. The petition states that the detention was arbitrary on five grounds, notwithstanding the fact that, "as the Government of Spain has noted, the detention of Mr. Mikel Egibar was conducted according to the Spanish legislation in force". The grounds cited were the following:

(a) Detention in police custody for five days, and in judicial custody for a further three days, without the assistance of a lawyer freely chosen by the detainee;

(b) Extension of police custody by order of a competent judge, without justification;

(c) Prolonged incommunicado detention, for a total of eight days;

(d) Ill-treatment of the detainee while in police custody, consisting of prolonged interrogations, physical ill-treatment in the form of repeated blows to the head, genitals and back and sleep deprivation;

(e) Proceedings were largely conducted in secret.

6. In a detailed reply, the Government acknowledges the facts contained in paragraphs (a), (b), (c) and (e) of the preceding paragraph, but denies the allegation of torture. It nevertheless maintains that the entire proceedings were conducted in accordance with the Spanish legislation in force.

7. The Group considers that its opinion should be based on the following facts:

(a) The Guardia Civil of Spain detained Mikel Egibar on 10 March 1999 at his home. To that end it had sought a warrant of arrest from Central Examining Court No. 3, which issued the warrant empowering the police to enter and search Mr. Egibar's home, pursuant to charges brought by the Public Prosecutor's Office;

(b) On the day after it detained Mikel Egibar the Guardia Civil sought confirmation from the court of the incomunicado detention in which the prisoner was being held, which was granted the same day;

(c) Before the expiry of the time limit for police custody, which under Spanish legislation is 72 hours for terrorist offences, on 12 March the Guardia Civil sought a 48-hour extension of the time limit for bringing the detainee before the court, which was also granted;

(d) The judicial decisions of 11 and 12 March providing for incommunicado detention and extension of the arrest period, ordered the judge of Examining Court No. 3 to take protective measures on behalf of the detainee, and regular medical examinations were conducted on 11, 12, 13, 14 and 15 March;

(e) On expiry of the extension of the detention period, on 15 March Mikel Egibar was placed at the disposal of the judge of Examining Court No. 5, Judge Baltasar Garzón, who proceeded to interrogate him; however, as the detainee refused to testify because of the absence of a freely-chosen defence counsel, his incommunicado detention period was extended to 18 March;

(f) During interrogations at police headquarters, and during his first appearances before the examining magistrate, Mikel Egibar received the assistance of lawyers assigned by the Bar Association;

(g) Mr. Egibar is being prosecuted for the offence of assistance to an armed group of a terrorist character.

8. It should be added that a remedy of habeas corpus lodged by Mr. Mikel Egibar's wife against both the detention, its extension and the incommunicado detention was declared inadmissible by the judge of Examining Court No. 3 and that a request for review lodged in respect of the secrecy of the preliminary investigation was dismissed by the judge of Examining Court No. 5 of the High Court.

9. Article 9, paragraph 3 of the International Covenant on Civil and Political Rights contains an obligation to ensure that a person is brought before a judge or other officer authorized by law to exercise judicial power "promptly" ("sin demora" in Spanish, "sans délai" in French). A 72-hour time limit is, in the Group's opinion, within the bounds of what can be considered to be "prompt". A 48-hour extension, in a case involving extremely serious offences and a difficult and complex investigation, under judicial control and with ongoing medical supervision to avoid torture - thus guaranteeing the protection of the accused - cannot be regarded as a violation of the right set forth in the above-mentioned provision concerned.

10. Incommunicado detention, when justified by insuperable problems in the investigation of the offence concerned, especially when crimes as serious as terrorism are involved, cannot in itself be regarded as contrary to the Covenant. Furthermore, the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment authorizes incommunicado detention for a few days in exceptional cases (Principles 15, 16 and 18, paragraph 3), such as "exceptional needs of the investigation", or "exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order". The Group considers charges of terrorism and conspiracy to represent an exceptional circumstance which, according to Spanish legislation, authorizes incommunicado detention for a brief period. It should be added that the judge of Examining Court No. 3 of the National High Court took measures for the physical and psychological protection of the person under arrest, to the point where he received a medical examination daily.

11. The same may be said of the right to choose a legal counsel, to be assisted by counsel during the trial and to meet with counsel, as set forth in the above-mentioned Body of Principles, adopted by the General Assembly, by consensus, in 1998. As Mikel Egibar did not ask to be interrogated in the presence of a lawyer of his own choosing and had accepted the presence of a court-appointed lawyer, his rights were not violated, especially since, as soon as the incommunicado detention was ordered, he was able to designate a lawyer whom he has kept throughout the rest of the proceedings.

12. Secrecy of inquiry proceedings in the early stages of the investigation is a measure authorized not only by Spanish law, but by nearly all bodies of legislation, as a measure designed to avoid the results of the trial being affected. It does not infringe the rights of the defence, which at the trial stage will have access to all procedural documents and will be able to challenge any irrelevant or illegally obtained evidence. Thus it cannot be considered that any right essential to the defence of the accused has been violated.

13. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mikel Egibar Mitxelena is not arbitrary.

Adopted on 29 November 1999

OPINION No. 27/1999 (Uzbekistan)

Communication addressed to the Government on 30 March 1999

Concerning Umarkhon Nazarov, Akhmadali Salomov and Abdurashid Nasriddinov

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Umarkhon Nazarov, aged 33, Akhmadali Salomov, aged 49, and Abdurashid Nasriddinov, aged 29, were detained on 28 February and 17 March 1999, and reportedly charged with "attempting to overthrow the constitutional order of Uzbekistan". It is alleged that their arrest and detention is part of a clampdown on so-called "Islamic extremists" and others, including the banned political opposition, their families and associates, whom

President Karimov of Uzbekistan holds responsible for a series of bomb explosions in Tashkent on 16 February 1999. All three detained individuals are related to the independent Imam Obidkhon Nazarov, who is sought by the Uzbek authorities for promoting "Wahhabism", an allegedly extreme form of Islam, for preaching illegally and attempting to establish an Islamic State.

6. Umarkhon Nazarov is one of the younger brothers of Obidkhon Nazarov and a citizen of Kyrgyzstan. On 17 March 1999, he was visiting his uncle, Akhmadali Salomov, in Namangan, Uzbekistan, when 15 armed policemen burst into Mr. Salomov's home, apparently looking for Obidkhon Nazarov. Both men were detained on charges of attempting to overthrow the constitutional order of Uzbekistan. According to the source, Umarkhon Nazarov is being held at the Namangan regional police department. On 22 March 1999, his lawyers were allowed access to him, but his family has not been allowed to see him. Akhmadali Salomov is being held at the Namangan regional department of internal affairs. It is alleged that he has not been allowed to see his lawyer or his family.

7. Abdurashid Nasriddinov is the brother of Obidkhon Nazarov's wife, Munira Nasriddinova, who had herself recently been detained for 10 days. Abdurashid Nasriddinov was arrested on 28 February 1999 in Namangan and charged with attempting to overthrow the constitutional order of Uzbekistan and organizing mass disturbances. He is said to be held at Namangan prison and to have been denied access to a lawyer and to his family.

8. It is reported that the Uzbek authorities are planning to transfer Umarkhon Nazarov, Akhmadali Salomov and Abdurashid Nasriddinov to the same detention centre and to link their criminal cases, charging them additionally with being members of an armed criminal gang.

9. According to the source, the Government of Uzbekistan has used the Tashkent bombings as a mere pretext to clamp down on perceived sources of opposition to President Karimov. Apart from the above-mentioned individuals, numerous other known or suspected opposition sympathizers, and suspected members of Islamic congregations, are said to have been arbitrarily detained. It is further reported that during the Government's recent campaign against the perceived spread of "Wahhabism", several individuals were detained solely for their alleged affiliation to independent Islamic congregations.

10. The allegations made by the source have never been refuted by the Government, although it had the opportunity to do so.

11. The Working Group observes that the three above-named persons have been detained without charge or trial and, in two of the three cases, without the opportunity to contact their lawyers or families. These facts constitute a clear violation of articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights, and principles 15, 16, 17, 18, 19, 32 and 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This violation of the right to a fair trial is of such gravity as to confer an arbitrary character upon their detention.

12. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of the liberty of Umarkhon Nazarov, Akhmadali Salomov and Abdurashid Nasriddinov is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights, and principles 15, 16, 17, 18, 19, 32 and 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and falls within category III of the principles applicable to the consideration of cases submitted to the Working Group.

13. Consequently, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 29 November 1999

OPINION No. 28/1999 (UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND)

Communication addressed to the Government on 11 June 1999

Concerning William Agyegyam

The United Kingdom is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time. The Government's reply was transmitted to the source, which did not transmit its comments.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations formulated, the Working Group welcomes the cooperation of the Government.

5. According to the source of the communication, William Agyegyam, a Ghanaian national, was sitting a college examination on 4 February 1999, when he was arrested for illegally overstaying in the United Kingdom. Mr. Agyegyam had arrived in the United Kingdom on 23 November 1988 and applied for political asylum; his request was denied in 1991. He reportedly was never informed that he would be deported.

6. According to the source, Mr. Agyegyam, who has resided in the United Kingdom for over 11 years, would face severe hardship if deported from the United Kingdom. He claims to have lost everything in Ghana, and has nothing to look forward to there. He argues that he started a new life in the United Kingdom, by pursuing higher education and developing social ties. There is no indication from the material submitted by the source that he has any prior criminal record. On the other hand, the information provided by the source does not contain any elements justifying the conclusion that he would face political or other persecution in Ghana, if deported.

7. In its reply, the Government of the United Kingdom provides a detailed explanation of the procedure that was followed in Mr. Agyegyam's case and which led to his arrest on 4 February 1999 and his deportation to Ghana, with his full consent, on 18 June 1999. The procedure was as follows:

- 12 November 1995: arrested for motoring offence and taken to a police station. Doubts arose as to his immigration status and he was interviewed by an immigration officer under caution, in the presence of a duty solicitor;

- 12 November 1995: served with a notice that he was an illegal entrant as defined in section 33 (1) of the 1971 Immigration Act;

- 13 November 1995: granted temporary admission to the United Kingdom under paragraph 21 of Schedule 2 to the Act. He was served with a notice requiring him to reside at a specific named address;

- 10 April 1996: Mr. Agyegyam's asylum application was refused, and he was served with notice of the decision and the reasons for it. He was advised of his right to appeal before his removal. The notice advised him how to exercise his right to appeal and of the availability of free legal advice from two voluntary organizations, independent of the Government;

- 26 September 1997: Mr. Agyegyam's appeal, under section 8 (4) of the 1993 Asylum and Immigration Appeals Act, was heard by an independent special adjudicator. He was represented by counsel and gave evidence through an official interpreter. The adjudicator determined that Mr. Agyegyam did not have a well-founded fear of persecution for any reason under the Convention relating to the Status of Refugees, if returned to Ghana. Mr. Agyegyam next contacted the Immigration Department in February 1998, when he applied for indefinite leave to remain outside of the Immigration Rules. On 16 September 1998, this application was refused;

- 4 February 1999: Mr. Agyegyam was arrested and detained pursuant to paragraph 16 (2) of Schedule 2 to the Immigration Act and served with notice advising him that directions had been given for his removal to Ghana on 7 February 1999. He was advised of his right of appeal, after removal, under section 16 (1) of the Act. Directions for removal were deferred until 12 February, because his representatives indicated that they wished to apply to the High Court for leave to move for judicial review of the decision to remove him. The application having been lodged with the High Court, removal was deferred to allow the Court to consider it before Mr. Ayegyam's removal;

- 14 June 1999: Mr. Ayegyam signed a disclaimer, in which he stated that he was aware of the legal representations made on his behalf, but that he wished to leave the United Kingdom without waiting for the outcome of those representations. On the same day, he was served notice that directions had been given for his removal to Ghana on 18 June 1999. He was once again notified of his right of appeal, after removal. Mr. Agyegyam was duly removed in accordance with these directions.

8. The Working Group's mandate does not enable it to examine the procedure which preceded Mr. Agyegyam's detention or the procedure which resulted in the decision to remove Mr. Agyegyam from the territory of the United Kingdom. Pursuant to its methods of work, the Working Group can only examine the character of the deprivation of liberty of the individual concerned. Under article 17 (a) of its working methods, the Group may file a case if the individual concerned has been released; but its working methods also enable it to formulate an Opinion, on a case-by-case basis, on the arbitrary or non-arbitrary character of the deprivation of liberty, notwithstanding the release of the person concerned. The Working Group is in a position to do so in the case of Mr. Agyegyam.

9. In the light of the legal and procedural guarantees laid down in the relevant United Kingdom legislation (i.e. the Immigration Act of 1971 and Schedule 2 thereto; the 1993 Asylum and Immigration Appeals Act), the European Convention on Human Rights and Fundamental Freedoms (art. 5 (1) (b) and (f)) and the International Covenant on Civil and Political Rights and other relevant international instruments, and having concluded, after examination of the detailed reply of the Government, that the United Kingdom immigration authorities respected those legal and procedural guarantees in the case of Mr. Agyegyam, the Working Group renders the following opinion:

> The deprivation of liberty of Mr. Agyegyam from 4 February 1999 to 18 June 1999 was not arbitrary.

Adopted on 1 December 1999

OPINION No. 29/1999 (SUDAN)

Communication addressed to the Government on 31 May 1999; urgent appeal sent to the Government on 26 April 1999

Concerning Father Hillary Boma Awul, Father Lino Sebit and 24 others

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group thanks the Government for the information it provided in reply to its urgent appeal of 26 April 1999, but regrets that the Government has not replied to its request for information of 31 May 1999.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The source notes that the communication concerns the following individuals:

Father Hillary Boma Awul; Father Lino Sebit; Patrick Celestino Morajan; Leoboldo Odira Rahmatallah; Joseph Adhiang Langlang; Faustino Awol Aduroc; Hassan Abdallah Kenya Adam; Nyok Awar Palak Abu Zinc; Rizig Ambrose Angoya; Faustino Awol Odong; Charles Oling Dommic; Gabriel Marong Deng; Babiker Fadlallah Abdalla; Kual Boi Beda; Lual Lual Aciek; Mustafa Shamsoon Idris; Babikir Mohamed Idris; Karkoun Nawek Daoul; Francis Mabjor; Abdallah Col; Peter Kong; Hassan Abu Adhan; Louis Ojori; Joe Awet Dominic; Khalid Yang; and Garang Malek Bak.

5. Father Lino Sebit was arrested on 29 July 1998, at a military command station near Khartoum. Father Hillary Boma was arrested on 1 August 1998. The Working Group had previously addressed an urgent appeal to the Government of the Sudan on behalf of these two individuals on 4 September 1998; on 26 April 1999, another urgent appeal was sent on behalf of all the above individuals by the Working Group and the Special Rapporteurs on the independence of judges and lawyers and on extrajudicial, summary or arbitrary executions.

6. The other above-mentioned individuals were reportedly arrested in August or September 1998, in connection with bomb explosions at several civilian installations near Khartoum on 30 June 1998; no one is said to have been killed or injured in those explosions. It is believed that no arrest warrant was shown to the individuals. All of them reportedly were subsequently charged with various offences under the Sudanese Penal Code of 1961, including, under articles 21 and 24, criminal conspiracy; under articles 50 and 51, undermining the Constitution and waging war against the State; and under articles 63 and 65, violent opposition and creation of criminal organizations. Individuals charged with these offences risk the death penalty under articles 50 and 51 of the Penal Code. It is contended that the President of the Sudan has stated that anyone convicted of the crimes would be hanged and subsequently crucified.

7. According to the source, the above-mentioned individuals have been held in incommunicado detention since their arrest, at a military detention facility in or near Khartoum. Access to their families, doctors and friends is said to have been denied altogether and access to their legal representatives is said to have been extremely limited. It is contended that the authorities obtained confessions under duress from each of the individuals of their involvement in the bombings. The tribunal is said to have heard testimony from the defendants to the effect that their confessions were in fact obtained under duress.

8. The three military judges trying the case are said to report through the chain of command to the very authorities prosecuting the case, thereby gravely compromising the independence and impartiality of the tribunal. The source alleges that the above-mentioned individuals had no access to legal counsel during their interrogation by the security forces and that they were not allowed to obtain legal advice until 5 October 1998, the day their trial began. Allegedly, lawyers wishing to represent the individuals were not informed of the trial date until 24 hours before its start. The tribunal selected a team of lawyers from a proposed list. It is said that five of the proposed lawyers were rejected by the tribunal. Moreover, it is said that only 20 of the 26 individuals were produced in court and that the other 6 were tried in absentia.

9. During the trial, the lawyers had no opportunity to meet with their clients under conditions that would have ensured confidential communication. The trial is being conducted in secrecy; members of the public, observers and journalists are allegedly not permitted to attend.

10. The source alleges that the tribunal consists of three military officers and a civilian representing the Ministry of Justice. All of the accused, except one, are of the Christian faith and the majority of them come from southern Sudan and do not speak or understand Arabic, the language used in the court proceedings.

11. The prosecution reportedly has introduced at the trial confessions which were reportedly obtained under duress and pressure; the source finds it improbable that all of the accused confessed voluntarily. The prosecution has undertaken to re-enact the crime scenarios, as alleged in the charge sheet before the tribunal. The individuals re-enact their respective roles as "confessed" by them in the commission of offences statement. The source also reports that the prosecution's case relies entirely on the confessions.

12. The above-mentioned individuals filed a petition in the Supreme Court of the Sudan questioning the jurisdiction of a military tribunal over the case and requesting its transfer to a civilian court. The Supreme Court has reportedly entertained the petition, and on 10 December 1998 stayed the proceedings. The petition is said to be pending for final hearing and disposal before the Supreme Court.

13. The Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur on the situation of human rights in the Sudan, whose mandate was established by resolution 1993/60 and renewed by resolution 1999/15 of the Commission on Human Rights (E/CN.4/1999/38 and Add.1).

14. In the light of the allegations that have been made, the Working Group welcomes the cooperation of the Government in respect of the urgent appeal of 26 April 1999. The Working Group has transmitted this reply to the source, which has communicated supplementary observations to the Working Group.

15. In its reply to the urgent appeal, dated 6 May 1999, the Government of the Sudan maintains that:

(a) Father Lino Sebit and Father Hillary Boma were arrested and charged in connection with the bombings in Khartoum on 30 June 1998;

(b) The bombings targeted vital civilian installations, including electric power stations and a theatre/movie house;

(c) The testimonies revealed that Father Lino Sebit and Father Hillary Boma and others were supervising the plot and financing it. Therefore, they were accused under sections 50 and 51 of the Criminal Law Act 1991 and are being tried before a military court under the Armed Forces Act 1986. Hence, they were arrested in accordance with the law;

(d) They are being treated in accordance with the law, which guarantees their right to physical integrity and not to be subjected to any inhuman or other forms of degrading treatment. The accused persons have been given due access to legal defence of their own choice of nine lawyers led by Abel Alier, ex-Deputy President of the Republic. They also have been given access to adequate medical care;

(e) The Constitutional Court has recently stayed the proceedings in the trial court in order to take decision as to the constitutional objection raised by the defence lawyers to the effect that civilians should not be tried before a military court.

16. In its supplementary detailed observations, the source observes that in its reply, the Government of the Sudan does not deny a substantial number of the allegations. The Government's statements regarding the remaining charges are disputed in the report of the Special Rapporteur of the Commission and by other reputable independent observers. Thus, the Government has not denied that:

(a) Six petitioners are being tried in absentia and that the Government has not investigated their disappearance, even though all six had been taken into custody by the security services. More disturbingly, the Government continues to refuse to investigate the disappearance of the six men even though there is credible evidence that some or all of them have been killed as a result of torture;

(b) The alleged victims' coerced confessions were used as evidence against them. The Government does not deny that it repeatedly interrogated and obtained "confessions" from some of the victims prior to the Government's appointing counsel, and that the Government continues to use these confessions as "evidence" against the detainees in violation of article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Special Rapporteur, in his report, confirmed that the above-mentioned individuals "were brought to trial before the military court on the basis of confessions made under duress and video evidence extracted from them at gunpoint" (E/CN.4/1999/38/Add. 1, para. 127), notwithstanding article 14 (3) (g) of the International Covenant on Civil and Political Rights, whereby no one shall be compelled to testify against himself or to confess guilt, and article 15 of the Convention against Torture;

(c) The alleged victims were denied the right to be treated by doctors of their choice. Thus, the Government does not deny that it refused to allow the petitioners to be visited and treated by their own doctors. As pointed out by the Special Rapporteur, the Government does not provide medical treatment to the petitioners;

(d) The alleged victims may be subject to execution by hanging or crucifixion.

17. As to the other, remaining charges, the source notes that the Government's claim that "the accused were treated in accordance with law, which guarantees their right to physical integrity ..." has been contradicted by the Special Rapporteur who, in his report, observed that all "the detainees interviewed ... bore marks of severe torture of which the Special Rapporteur has taken photographic evidence" (ibid.). Additional support for the victims' claim that they had been tortured is said to come from the military tribunal itself, which: (a) has refused to investigate their multiple claims of torture; (b) has prevented them from gaining access to independent physicians or witnesses; (c) has accepted undated and unauthenticated medical "reports" issued at the military's request; and (d) has shown no intention in investigating the disappearance of six of the victims who were last seen in the custody of security forces on a military base. These actions and inactions of the military tribunal are said to lend credence to the allegations that government security forces tortured the petitioners. Contrary to the Government's claim that the victims were "given due access to legal defence of their own choice", the source reaffirms that the Government selected counsel for the defendants and that their first access to defence counsel was more than two months after arrest and one day after the trial itself had started. Furthermore, it remains uncontested that the defendants were denied the right to communicate confidentially with their counsel.

18. Also, contrary to the Government's assertion that the tribunal allowed journalists and the media to attend the trial, it is reaffirmed that the trial has been conducted in almost total secrecy. Thus, the source notes that the defendants are unaware of any independent journalists or international media representatives having attended the trial. The secrecy of the trial is said to contravene article 14 (1) of the International Covenant on Civil and Political Rights.

19. The source recalls that despite the Government's assertion that the victims were tried for their alleged participation in bombings of civilian targets, the Special Rapporteur concluded differently, arguing that the case "bears all the features of a political trial. The accused are southerners, mostly Christian, and the best known, Father Hillary Boma, a priest, is an outspoken opponent of the regime" (ibid., para. 126).

20. Finally, the source notes that it does not suffice for the Government to say that the accused were allowed to meet with their families while the court was in session. Even if this assertion were true, the Government's refusal to allow the defendants to receive visitors outside the court sessions would be a violation of international law, as the right of the accused is not limited exclusively to periods when the court is in session.

21. The Working Group notes that the Special Rapporteur on the situation of human rights in the Sudan made a number of specific observations concerning the trial of the above-mentioned 26 persons before the military court in his report to the Commission on Human Rights dated 9 April 1999 (E/CN.4/1999/38/Add.1). The Working Group notes that in its reply, the Government of the Sudan does not deny many of the charges levelled against it by the source, namely (a) that six of the accused were tried in absentia, and there are even fears that they have disappeared; (b) that the confessions obtained from some of the accused under duress have been used as evidence against them, in violation of article 15 of the Convention against Torture (this is confirmed by the Special Rapporteur in paragraph 127 of his report); and (c) that the accused have been denied the right to be treated by doctors of their choice. According to the Special Rapporteur, the Government of the Sudan has reportedly denied the accused medical treatment.

22. On the other hand, the Government denies that the accused have been tortured. Again in paragraph 127 of his report, however, the Special Rapporteur alleges that all the detainees he interviewed had been subjected to ill-treatment and that some of them bore marks of severe torture, of which he had taken photographic evidence. Likewise, the Government's claim that the accused had access to counsel of their choice was refuted by the Special Rapporteur, who noted that the first time such access had been granted was in early October 1988, more than two months after their arrest and one day after the trial had begun.

23. According to the Government, the accused are being prosecuted for causing explosions in Khartoum on 30 June 1998. The source contends that the trial is basically political in nature, a view shared by the Special Rapporteur, who notes that the accused are from southern Sudan, most are Christian and the best known of them, Father Boma, is a prominent opponent of the regime.

24. The source also reports that the accused are civilians, but that they have been tried before a special military court. It also recalls that, in the past, the Working Group has on several occasions stated that military courts are principally to blame in cases of arbitrary detention. Moreover, the proceedings against the above-mentioned individuals have been stayed by a decision of the Supreme Court of 10 December 1998 pending a ruling on the appeal lodged by the accused, who are challenging the competence of the special military court.

25. In the light of the foregoing, the Working Group renders the following opinion:

> (a) The deprivation of liberty of Hillary Boma, Lino Sebit and the other 24 accused persons contravenes articles 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and is of such gravity as to give the character of arbitrariness to the deprivation of liberty (category III);
>
> (b) The deprivation of liberty of the above-mentioned persons is arbitrary because it is apparently based on their political activities, thereby violating their freedom of opinion and expression guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights (category II);
>
> (c) The Working Group on Enforced or Involuntary Disappearances should be seized of the matter of the apparent disappearance of six of the accused.

26. In the light of the foregoing, the Working Group requests the Government:

(a) To take all necessary steps to ensure the right of the above-mentioned persons to a fair trial;

(b) To set the accused free if it has no evidence other than confessions obtained under duress;

(c) To take appropriate measures to align procedures with international obligations arising from the international instruments to which the Sudan is a party.

Adopted on 30 November 1999

OPINION No. 30/1999 (NIGERIA)

Communication addressed to the Government on 30 June 1998

Concerning Volodymyr Timchenko, Alexander Shulgin, Anatolyi Tyrkin, Vadim Nefedov and 19 other Ukrainian crew members of the Dubai Valour

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The communication, a summary of which has been transmitted to the Government, concerns, according to the source, Volodymyr Timchenko, a Ukrainian national, born on 9 June 1958, radio officer on the M/V Dubai Valour, domiciled in Ukraine (Kerson region) at 76 Sovetskaya Street in Golozerka, and 22 other members of the crew on board the Dubai Valour at the time of the incident.

6. The case concerns the seizure of a cargo vessel, the Dubai Valour, and the forcible retention on board the vessel of its entire crew at Sapele, Nigeria, since August 1997. The vessel was carrying second-hand oil rig drilling parts from India to Nigeria. During a storm, part of the cargo loaded on the deck of the vessel was lost overboard; the terms of the bill of lading included the clause "part cargo laded on deck at shipper's risk".

7. Upon completion of the unloading of the cargo in Nigeria on 8 August 1997, the cargo's receivers, Lonestar Nigeria, impounded the ship against a claim equivalent to US$ 17 million, although an expert on oil drilling equipment had put the total value of the claim at only US$ 170,000.

8. Although the ship's owner hired local lawyers and various attempts were made to bring the matter before the local courts, these efforts were frustrated by the claimants. On 22 August 1997, the Federal High Court in Lagos ordered the ship released against a letter of undertaking in the amount of US$ 1 million. This letter was provided, but the ship was unable to leave port owing to difficulties encountered with local agents appointed by Lonestar.

9. Then, the Area Naval Commander refused to accept the release order; in addition, the Nigerian Port Authority advised that it had received a letter from Lonestar stating that the ship should not be allowed to leave port. The shipowners' lawyer requested the Naval Chief of Staff and the Chief Judge of the Federal High Court to intervene, but to no avail.

10. In early September 1997, representatives of the claimants, in cooperation with military personnel, were reported to have boarded the ship and attempted to move it forcibly to an unsafe location. On 9 September 1997, the claimants obtained a court order requiring the ship to be moved to that location. The ship was eventually permitted to leave the unsafe berth, but when it moved downriver, it was fired on by armed men in boats. The captain thereupon stopped the ship. On 24 September 1997, according to the source, a substantial group of military personnel boarded the ship and forced the captain to take it to a location in the port of Sapele next to the claimants' offices, which was also unsafe as it was too small. On 30 September 1997, the High Court order releasing the ship was stayed, upon application by the claimants.

11. According to the source, the owners of the ship are concerned about the safety of the crew owing to the continued presence of military personnel on board the ship and the removal of the ship's papers. In mid-October 1997, the owners sent a representative to Nigeria to negotiate the ship's release and to meet with the claimants and the owner of Lonestar, Chief Humphrey Idisi. The negotiations did not take place. The owners then met with two Lonestar representatives in London who expressed willingness to accept a settlement equivalent to the replacement cost of the lost parts plus US$ 3.5 million to cover alleged consequential losses. But as Lonestar could not produce any evidence to substantiate its claim, the owners declined to settle on that basis.

12. The source expresses concern at the situation of the crew who have been on board the vessel for over 11 months, 9 of them in Sapele, and that their health and safety conditions are deteriorating. For that reason, the owners' legal representatives in Nigeria appealed to the local court under the Fundamental Human Rights (Enforcement) Proceedings, in a suit on behalf of all

the members of the crew against the Attorney-General of Nigeria, the Controller of Immigration, the Minister for Internal Affairs, Lonestar Drilling Co. Ltd. and its owner. No progress has allegedly been made as the court hearings have been repeatedly postponed.

13. In the spring of 1998, the source indicates, further negotiations between the shipowners and Lonestar were organized in Switzerland. They were aborted, as Lonestar indicated that it would no longer accept a settlement of US$ 3.5 million and asked for US$ 5 million instead. The owners, realizing that no progress would be made on the cargo claim, focused on the question of the repatriation of the crew. Lonestar indicated that the crew would not be permitted to repatriate.

14. The source contends that the judicial system of Nigeria is being continuously abused by Lonestar and its owner, Chief Idisi, and that every attempt to secure the release of the crew through the local courts has failed; the options available to the owners are now seriously reduced. It is further said to be a violation of basic human rights that 23 individuals were confined to a ship for more than nine months because of a commercial dispute.

15. In a submission of 19 February 1999, the source notes that the majority of the sailors (apparently 19) had been released on an unspecified date. Only Volodymyr Timchenko, Alexander Shulgin, Chief Officer Anatolyi Tyrkin and Chief Engineer Vadim Nefedov continue to be detained aboard the Dubai Valour.

16. Although no reply has been received from the Government, the Working Group notes that the source has produced a number of documents issued by Nigerian authorities the authenticity of which cannot be disputed. The documents confirm that the allegations of arbitrary deprivation of liberty - in this case on board a ship - are well founded; several judgements, notably from the Nigerian Federal High Court in Lagos, requested the local authorities, including the area Chief Inspector of Police, to take steps to ensure that the party concerned could appear without hindrance before the court, but to no avail.

17. In its decision of 19 June 1998, the High Court considered in particular that the seizure and withholding of the applicants' international passports and travel documents by the Immigration Service were a gross breach of the fundamental rights of the applicants to freedom of movement, as guaranteed under Order Section 31 (1) and of the Constitution of the Federal Republic of Nigeria of 1979, and of the right to leave Nigeria as guaranteed under article 5 of the African Charter on Human and Peoples' Rights.

18. In the light of the above, the Working Group:

(a) Is pleased to note that the country's highest judicial authority considers the detention of Volodymyr Timchenko and the other crew members on board the Dubai Valour to be arbitrary;

(b) Considers that the deprivation of liberty of these persons on board ship by a non-State group does not absolve the Government of its responsibilities, in that it has been established, inter alia by the affidavits produced by the source, that the authorities knowingly tolerate this illegal situation and, further, refuse to carry out the court injunctions to release Volodymyr Timchenko and the other three crew members still in detention;

(c) Considers the detention of Volodymyr Timchenko and the other crew members still detained on board ship to be arbitrary in that - as established by the Federal High Court of Justice - it lacks any legal basis and thereby violates article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, to which Nigeria is a party, and falls within category I of the principles applicable to the consideration of cases submitted to the Working Group;

(d) Also considers the detention of the 19 other crew members to be arbitrary as regards the period of their detention on board the Dubai Valour and likewise to fall within category I of the principles applicable to the consideration of cases submitted to the Working Group for the period in question.

19. Having declared arbitrary the deprivation of liberty imposed upon Volodymyr Timchenko, Alexander Shulgin, Anatolyi Tyrkin and Vadim Nefedov and on the 19 other crew members during the period they were kept on board the ship, the Working Group requests the Government to take the necessary steps to remedy the situation, in particular by implementing the court judgements, so as to bring it into conformity with the principles incorporated in the Universal Declaration of Human Rights (art. 9) and with articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Nigeria is a party.

Adopted on 30 November 1999

OPINION No. 31/1999 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 20 July 1998

Concerning Severino Puentes Sosa

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source but did not receive its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. Severino Puentes Sosa is a Cuban national and a legal immigrant to the United States. He is alleged to have entered the United States in 1980 under an agreement signed by President Jimmy Carter and the Cuban authorities. It is claimed that even though Severino Puentes Sosa has completed serving a prison term to which he was sentenced he, along with other Cuban citizens, continues to be detained at a Louisiana country jail. He allegedly appears

before a panel every year which examines whether his reintegration into society is possible. The source alleges that his release is often denied on the basis of the panel's preconceived notions that he is an untrustworthy individual.

6. The Government, in its response dated 15 October 1998, justified both on facts and in law the continued detention of Severino Puentes Sosa. The Government first explained the applicable legal regime.

7. In order to determine what law to apply where a challenge to immigration detention has been presented, recent amendments to the Immigration and Nationality Act (INA) must be considered. In any particular case, the relevant facts in determining what statutes and regulations govern detention are the date the alien's immigration proceedings commenced, whether the alien is under a final order of exclusion, deportation, or removal, and whether the alien has been convicted of a serious criminal offence enumerated in the statute.

8. Before passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law No. 104-208 (30 September 1996), courts held that the Attorney-General had statutory authority to detain inadmissible aliens subject to final orders of exclusion, citing the Attorney-General's express authority to detain inadmissible aliens pending a hearing before an immigration judge, her obligation to deport such aliens immediately unless she determines that immediate deportation is impracticable or improper, and her discretionary authority to grant (and revoke) immigration parole. These rules still apply to aliens whose exclusion proceedings commenced prior to 1 April 1997 (8 CFR sections 235.3 (e) and 241.20).

9. The Attorney-General was directed to detain excluded aliens convicted of aggravated felony crimes by former INA section 236 (e), 8 USC section 1226 (e) (1994), in addition to the Immigration Act of 1990, Public Law No. 101-649 (29 November 1990). The courts construed former section 236 (e) as a limit on the release or immigration parole of excludable aliens (rather than a limit on the authority to detain such aliens). Pre-IIRIRA section 236 (e) still applies to aliens in proceedings initiated before 1 April 1997.

10. The Immigration and Nationality Act addresses the detention and release of illegal aliens both pending removal proceedings and pending actual removal from the United States. It should be emphasized that United States law has always contemplated that any alien denied admission to the United States or ordered deported from the country will be promptly returned to his/her own country or to a third country willing to accept him/her. Current law contemplates that such removal will occur within 90 days of a final order requiring an alien to leave the United States. Further, while the statute is more restrictive regarding the detention and release of aliens in immigration proceedings who have been convicted of certain enumerated crimes, the restrictions are clearly aimed at individuals convicted of serious or repeated offences, among whom the incidence of further criminal activity and flight to avoid deportation has been well documented.

11. The Government argues that the case inquired into by the Working Group involves a criminal alien who cannot be promptly repatriated because his own Government has failed to issue travel documents or otherwise honour its obligation under international law to accept the return of its nationals. Because of recent amendments to the immigration statute, different provisions of law may apply depending on the effective dates of the legislation and when

proceedings commenced in an individual alien's case. While many of the recent changes reflect the heightened concern of the United States Congress with criminal aliens who commit further crimes and fail to comply with immigration orders, the statute uniformly reflects a careful balancing of the interests of the United States and the need to protect its lawful inhabitants from potentially dangerous aliens against the humanitarian concerns that necessarily arise when such an alien is illegally present in the United States but is unreturnable because the designated country of deportation will not accept him. The statute thus provides for release at the discretion of the Attorney-General under terms that impose minimal demands on aliens who wish to live and work in the community while awaiting deportation - that they not endanger other persons or property, and that they not abscond to avoid further proceedings or eventual enforcement of their immigration orders.

12. The statutory and regulatory guidance regarding the detention and release of criminal alien offenders who remain in the United States although ordered deported is presently provided by the transition period custody rules (TPCR) in section 303 (b) (3) (b) of IIRIRA, if their administrative immigration proceedings commenced before 1 April 1997.

13. The custody and release of aliens who were denied admission or ordered excluded from the United States in proceedings that commenced before 1 April 1997 continue to be governed by the statutory scheme in place prior to that date. If the Attorney-General determines that immediate exclusion is not practicable or proper, such aliens may be paroled from custody (8 USC sections 1227 (a), 1182 section 2 (d) (5) (a) (1994, supp. 1997)).

14. Immigration parole is discretionary and authorized on a "case-by-case basis for urgent humanitarian reasons or significant public benefit" (8 USC section 1182 section (d) (5) (a) (supp. 1997)). An Immigration and Naturalization Service (INS) district director thus may parole an excluded alien whose continued detention is not in the public interest (8 CFR section 212.5 (a) (5)).

15. Additional regulations provide annual consideration for parole to Cuban nationals who arrived in the "Mariel boatlift" in 1980 who have failed to gain legal status in the United States because of their criminal convictions in Cuba and/or the United States (8 CFR section 212.12). An excludable alien who has been convicted of a crime defined as an aggravated felony must demonstrate that his release will not endanger the safety of other persons or property (8 USC section 1226 (e) (3) (1994)).

16. Criminal aliens denied admission or found deportable in removal proceedings commenced after 1 April 1997 may be conditionally released at the end of the 90-day removal period unless the Attorney-General determines that the alien is a risk to the community or unlikely to comply with the order of removal (8 USC section 1231 (a) (supp. 1997)). Consideration is given to such factors as the alien's criminal history, rehabilitation or recidivism, and relatives or other equities in the United States (8 CFR section 241.4 (1998)). Inadmissible aliens under final orders of removal may apply to the district director for parole; deportable aliens under final orders of removal may also appeal the district director's custody determination or seek amelioration of the conditions under which release has been approved before the Board of Immigration Appeals (see, generally, 8 CFR section 236 (1998)).

17. In short, for criminal aliens who cannot be promptly removed from the United States, IIRIRA section 303, amended INA section 241 (a) (6) and the Attorney-General's statutory parole authority eliminate the possibility of indefinite detention without discretionary review pending efforts to return an alien to his own country.

18. The Government accordingly contends that international law is not violated by the detention of dangerous criminal aliens unlawfully present in the United States; that the applicable statutes, administrative regulations and judicial precedent reflect a thorough weighing of the interests of the United States and those of the individuals subject to removal proceedings.

19. In the light of the above, the Government dealt with the case of Severino Puentes Sosa. Severino Puentes Sosa left the port of Mariel, Cuba, and arrived in the United States on 25 June 1980 at Key West, Florida. He has been granted discretionary parole into the United States three times. Parole has been revoked because of his criminal conduct. Shortly after his arrival in the United States, he was transferred to the refugee camp in Indiantown Gap, Pennsylvania, and on 6 October 1980 he was paroled by the INS to a sponsor. Shortly thereafter, on 11 November 1980, Mr. Puentes Sosa was arrested in Howard County, Maryland, and charged with two counts of purse-snatching and one count of a traffic offence. Records indicated that he was released on bail or released on recognizance. On 1 January 1981, in Perth Amboy, New Jersey, Mr. Puentes Sosa and two other individuals committed a serious crime. They were arrested and charged with aggravated sexual assault, kidnapping, first degree, and aggravated assault, second degree. On 14 October 1982 he pleaded guilty to kidnapping and aggravated assault and was sentenced to a term of 10 years in prison. Also, his criminal record discloses an arrest for robbery in Perth Amboy, on 12 March 1981. This charge was subsequently dismissed.

20. On 29 October 1985 he was released from prison and transferred to INS custody. On 17 November 1986, an immigration judge ordered his exclusion; however, because of the impossibility of deporting him back to Cuba, he remained under INS custody. While under INS custody, Mr. Puentes Sosa received several disciplinary reports as follows:

28 July 1987 - refusing to work

8 October 1987 - using intoxicants

22 January 1988 - destruction of government property

25 February 1988 - disruptive conduct/refusing an order

7 July 1988 - disorderly conduct.

21. Also while under INS custody, Mr. Puentes Sosa was interviewed by an INS parole panel on 7 April 1988, and on 3 February 1989 by the associate commissioner for enforcement. He was denied parole. On 19 January 1990 a Department of Justice parole panel reviewed Mr. Puentes Sosa's records and recommended that he be granted parole. Mr. Puentes Sosa was released from INS custody on 27 December 1990 through the sponsorship of a halfway house programme, in Kansas City, Missouri. On 21 March 1991, the halfway house requested that the

INS revoke Mr. Puentes Sosa's parole due to his non-compliance with the programme's rules and regulations. Reportedly, he was cited on three different occasions for being intoxicated, leaving the house twice without permission, not reporting his paycheques and being abusive to staff, among others. On 22 March 1991, Mr. Puentes Sosa was returned to INS custody.

22. After returning to INS custody, on 16 October 1991, he received a disciplinary report for making, possessing or using intoxicants. Mr. Puentes Sosa was again interviewed by an INS parole panel on 19 November 1991 but denied parole at that time. On 13 October 1992, he was again interviewed and on 9 November 1992, the associate commissioner for enforcement approved his parole.

23. On 4 February 1994, Mr. Puentes Sosa was released from INS custody and placed in a halfway house programme, with International Self Help in Los Angeles, California. However, shortly after his arrival, he became a problem by violating the rules and regulations of the programme. Reportedly, he started drinking alcohol and stealing from other residents. On 24 February 1994, he tested positive for consumption of marijuana, and on 8 June 1994, for use of cocaine. He was referred to a detox centre for 30 days, without success. After being considered dangerous to himself, staff and community, on 17 November 1994, the halfway house requested that the INS revoke his parole. However, he absconded prior to being arrested by the INS.

24. On 4 May 1995, Mr. Puentes Sosa was arrested for tampering with the identification marks on a firearm and possession of a narcotic controlled substance. The first count was dismissed and a warrant issued for the second. On 11 August 1994, he was arrested by the Los Angeles Police Department (LAPD) and charged with possession of a narcotic controlled substance (cocaine). On 1 June 1995, he pleaded guilty. On 19 June 1995, he was again arrested by the LAPD for possession/purchase of cocaine. On 17 July 1995, he pleaded guilty and was convicted of possession of narcotics (cocaine). He was sentenced to concurrent terms of three years' imprisonment for the two offences. On 11 November 1995, he was charged by the LAPD with first-degree residential burglary, burglary and kidnapping to commit a robbery. On 26 February 1996, he pleaded guilty and was convicted of residential burglary, first degree, and was sentenced to two years in prison, the sentence to run concurrently with the three years in prison for the two previous convictions. On 26 August 1997, Mr. Puentes Sosa was returned to INS custody. He was interviewed by a parole panel on 12 May 1998 and his continued detention was directed on 16 July 1998. Pursuant to 8 CFR section 212.12, the INS will reconsider his parole status within one year of the date the decision was taken.

25. The response of the Government clearly sets out the circumstances in which Severino Puentes Sosa was detained and released. Whenever Mr. Puentes Sosa has been granted parole he has not only failed to comply with the conditions of parole but has on repeated occasions committed serious criminal offences for which he was prosecuted. After serving his latest sentence, Mr. Puentes Sosa was returned to INS custody and was interviewed by a parole panel on 12 May 1998. His continued detention was directed on 16 July 1998. The record does not show that he was subsequently released on parole.

26. Under the relevant law, the Attorney-General has the discretion to grant parole to detained aliens on a case-by-case basis, after determining that the alien's immediate expulsion is neither practicable nor proper. In any event, regulations applicable to Cuban nationals who arrived with the "Mariel boatlift" require the alien to be considered for parole on an annual basis. This applies to the case of Mr. Puentes Sosa, whose exclusion proceedings commenced prior to 1 April 1997.

27. The Working Group has given due consideration to the facts and circumstances in which Mr. Puentes Sosa has been denied temporary parole. The Group is aware that he was last denied temporary parole on 16 July 1998. Considering that Mr. Puentes Sosa has, in the past, not only violated his conditions of parole but also committed offences of a serious nature while on parole, the Working Group does not consider his detention to be arbitrary.

Adopted on 1 December 1999

OPINION No. 32/1999 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 4 May 1998

Concerning Mohamed Bousloub

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. Mohamed Bousloub, an Algerian citizen whose date of arrival in the United States is not known, was convicted of petty theft and sentenced to four months' imprisonment. He has been held in the Federal Detention Centre in Oakdale, Louisiana, since 20 November 1996. On 30 June 1997 he was ordered deported by an immigration judge, but despite that order he continues to be deprived of his freedom, over 30 months after he completed serving his prison sentence.

6. In its response dated 15 October 1998, the Government justified both on facts and in law the continued detention of Mohamed Bousloub. The Government first explained the applicable legal regime.

7. In order to determine what law to apply where a challenge to immigration detention has been presented, recent amendments to the Immigration and Nationality Act (INA) must be considered. In any particular case, the relevant facts in determining what statutes and regulations govern detention are the date the alien's immigration proceedings commenced, whether the alien is under a final order of exclusion, deportation, or removal, and whether the alien has been convicted of a serious criminal offence enumerated in the statute.

8. Before passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law No. 104-208 (30 September 1996), courts held that the Attorney-General had statutory authority to detain inadmissible aliens subject to final orders of exclusion, citing the Attorney-General's express authority to detain inadmissible aliens pending a hearing before an immigration judge, her obligation to deport such aliens immediately unless she determines that immediate deportation is impracticable or improper, and her discretionary authority to grant (and revoke) immigration parole. These rules still apply to aliens whose exclusion proceedings commenced prior to 1 April 1997 (8 CFR sections 235.3 (e) and 241.20).

9. The Attorney-General was directed to detain excluded aliens convicted of aggravated felony crimes by former INA section 236 (e), 8 USC section 1226 (e) (1994), in addition to the Immigration Act of 1990, Public Law No. 101-649 (29 November 1990). The courts construed former section 236 (e) as a limit on the release or immigration parole of excludable aliens (rather than a limit on the authority to detain such aliens). Pre-IIRIRA section 236 (e) still applies to aliens in proceedings initiated before 1 April 1997.

10. The Immigration and Nationality Act addresses the detention and release of illegal aliens both pending removal proceedings and pending actual removal from the United States. It should be emphasized that United States law has always contemplated that any alien denied admission to the United States or ordered deported from the country will be promptly returned to his/her own country or to a third country willing to accept him/her. Current law contemplates that such removal will occur within 90 days of a final order requiring an alien to leave the United States. Further, while the statute is more restrictive regarding the detention and release of aliens in immigration proceedings who have been convicted of certain enumerated crimes, the restrictions are clearly aimed at individuals convicted of serious or repeated offences, among whom the incidence of further criminal activity and flight to avoid deportation has been well documented.

11. The Government argues that the case inquired into by the Working Group involves a criminal alien who cannot be promptly repatriated because his own Government has failed to issue travel documents or otherwise honour its obligation under international law to accept the return of its nationals. Because of recent amendments to the immigration statute, different provisions of law may apply depending on the effective dates of the legislation and when proceedings commenced in an individual alien's case. While many of the recent changes reflect the heightened concern of the United States Congress with criminal aliens who commit further crimes and fail to comply with immigration orders, the statute uniformly reflects a careful balancing of the interests of the United States and the need to protect its lawful inhabitants from

potentially dangerous aliens against the humanitarian concerns that necessarily arise when such an alien is illegally present in the United States but is unreturnable because the designated country of deportation will not accept him. The statute thus provides for release at the discretion of the Attorney-General under terms that impose minimal demands on aliens who wish to live and work in the community while awaiting deportation - that they not endanger other persons or property, and that they not abscond to avoid further proceedings or eventual enforcement of their immigration orders.

12. The statutory and regulatory guidance regarding the detention and release of criminal alien offenders who remain in the United States although ordered deported is presently provided by the transition period custody rules (TPCR) in section 303 (b) (3) (b) of IIRIRA, if their administrative immigration proceedings commenced before 1 April 1997.

13. The custody and release of aliens who were denied admission or ordered excluded from the United States in proceedings that commenced before 1 April 1997 continue to be governed by the statutory scheme in place prior to that date. If the Attorney-General determines that immediate exclusion is not practicable or proper, such aliens may be paroled from custody (8 USC sections 1227 (a), 1182 section 2 (d) (5) (a) (1994, supp. 1997)).

14. Immigration parole is discretionary and authorized on a "case-by-case basis for urgent humanitarian reasons or significant public benefit" (8 USC section 1182 section (d) (5) (a) (supp. 1997)). An Immigration and Naturalization Service (INS) district director thus may parole an excluded alien whose continued detention is not in the public interest (8 CFR section 212.5 (a) (5)).

15. Criminal aliens denied admission or found deportable in removal proceedings commenced after 1 April 1997 may be conditionally released at the end of the 90-day removal period unless the Attorney-General determines that the alien is a risk to the community or unlikely to comply with the order of removal (8 USC section 1231 (a) (supp. 1997)). Consideration is given to such factors as the alien's criminal history, rehabilitation or recidivism, and relatives or other equities in the United States (8 CFR section 241.4 (1998)). Inadmissible aliens under final orders of removal may apply to the district director for parole; deportable aliens under final orders of removal may also appeal the district director's custody determination or seek amelioration of the conditions under which release has been approved before the Board of Immigration Appeals (see, generally, 8 CFR section 236 (1998)).

16. In short, for criminal aliens who cannot be promptly removed from the United States, IIRIRA section 303, amended INA section 241 (a) (6) and the Attorney-General's statutory parole authority eliminate the possibility of indefinite detention without discretionary review pending efforts to return an alien to his own country.

17. The Government accordingly contends that international law is not violated by the detention of dangerous criminal aliens unlawfully present in the United States; that the applicable statutes, administrative regulations and judicial precedent reflect a thorough weighing of the interests of the United States and those of the individuals subject to removal proceedings.

18. In the light of the above, the Government dealt with the case of Mohamed Bousloub. Mohamed Bousloub was lawfully admitted to the United States on a visitor's visa. He was ordered deported on 30 June 1997, based on his conviction for criminal theft. He appealed that decision to the Board of Immigration Appeals (BIA). On 3 September 1997, the appeal was dismissed as inappropriately filed. On 18 February 1998, Mr. Bousloub filed, a motion to reopen his appeal with the BIA; that motion was denied on 30 June 1998. In December 1997, the INS had requested travel documents from the Government of Algeria but has not proceeded with the case for removal because of Mr. Bousloub's pending application for relief under the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, filed on 4 April 1998.

19. Mr. Bousloub is also subject to the TPCR (see para. 12) since immigration proceedings were commenced prior to 1 April 1997. He was brought for a bond hearing on 31 January 1997 before an immigration judge who ordered his release upon posting of a US$ 20,000 bond. Mr. Bousloub never posted the bond, nor has he appealed the judge's decision. It is the position of the Government that Mr. Bousloub has not exhausted administrative remedies, as he could ask the BIA for custody/bond redetermination under post-order provisions in 8 CFR 236.

20. In the case of Mohamed Bousloub, the facts clearly suggest that he has already served his sentence but cannot be released because of his inability to post a US$ 20,000 bond. The Working Group finds this condition unreasonable. The contention that Mr. Bousloub has not sought a redetermination of the bond, has not exhausted administrative remedies and is therefore not entitled to be released is not convincing. If the nature of the bond required to be posted is harsh and disproportionate, in view of the means and the status of the accused, that by itself would render the detention of Mr. Bousloub arbitrary.

21. In these circumstances, the Working Group is of the opinion that the deprivation of liberty of Mohamed Bousloub is arbitrary and in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, to which the Unted States is party, and falls within category III of the categories of cases submitted for the Group's examination.

22. Accordingly, the Working Group requests the Government to take appropriate measures to remedy the situation of Mohamed Bousloub and to bring it into conformity with the provisions of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

Adopted on 1 December 1999

OPINION No. 33/1999 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 4 May 1998

Concerning César Manuel Guzmán Cruz

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source but did not receive its comments. The Working Group believes it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. César Manuel Guzmán Cruz, aged 43, is a Cuban refugee. He was reportedly arrested on 22 July 1978 in Miami, Florida, by agents of the Miami Police Department. Allegedly, he was not made aware of the reasons for his arrest nor of the details of his conviction. He has been held in the Three Rivers Federal Institution in Texas. Allegedly, he completed serving his sentence in 1992. He has reportedly exhausted all Bureau of Prisons (BOP) administrative remedies and his habeas corpus petition (No. 2241) has also been rejected.

6. In its response dated 15 October 1998, the Government justified both on facts and in law the continued detention of César Manuel Guzmán Cruz. The Government first explained the applicable legal regime.

7. In order to determine what law to apply where a challenge to immigration detention has been presented, recent amendments to the Immigration and Nationality Act (INA) must be considered. In any particular case, the relevant facts in determining what statutes and regulations govern detention are the date the alien's immigration proceedings commenced, whether the alien is under a final order of exclusion, deportation, or removal, and whether the alien has been convicted of a serious criminal offence enumerated in the statute.

8. Before passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law No. 104-208 (30 September 1996), courts held that the Attorney-General had statutory authority to detain inadmissible aliens subject to final orders of exclusion, citing the Attorney-General's express authority to detain inadmissible aliens pending a hearing before an immigration judge, her obligation to deport such aliens immediately unless she determines that immediate deportation is impracticable or improper, and her discretionary authority to grant (and revoke) immigration parole. These rules still apply to aliens whose exclusion proceedings commenced prior to 1 April 1997 (8 CFR sections 235.3 (e) and 241.20).

9. The Attorney-General was directed to detain excluded aliens convicted of aggravated felony crimes by former INA section 236 (e), 8 USC section 1226 (e) (1994), in addition to the Immigration Act of 1990, Public Law No. 101-649 (29 November 1990). The courts construed former section 236 (e) as a limit on the release or immigration parole of excludable aliens (rather than a limit on the authority to detain such aliens). Pre-IIRIRA section 236 (e) still applies to aliens in proceedings initiated before 1 April 1997.

10. The Immigration and Nationality Act addresses the detention and release of illegal aliens both pending removal proceedings and pending actual removal from the United States. It should be emphasized that United States law has always contemplated that any alien denied admission to the United States or ordered deported from the country will be promptly returned to his/her own country or to a third country willing to accept him/her. Current law contemplates that such removal will occur within 90 days of a final order requiring an alien to leave the United States. Further, while the statute is more restrictive regarding the detention and release of aliens in immigration proceedings who have been convicted of certain enumerated crimes, the restrictions are clearly aimed at individuals convicted of serious or repeated offences, among whom the incidence of further criminal activity and flight to avoid deportation has been well documented.

11. The Government argues that the case inquired into by the Working Group involves a criminal alien who cannot be promptly repatriated because his own Government has failed to issue travel documents or otherwise honour its obligation under international law to accept the return of its nationals. Because of recent amendments to the immigration statute, different provisions of law may apply depending on the effective dates of the legislation and when proceedings commenced in an individual alien's case. While many of the recent changes reflect the heightened concern of the United States Congress with criminal aliens who commit further crimes and fail to comply with immigration orders, the statute uniformly reflects a careful balancing of the interests of the United States and the need to protect its lawful inhabitants from

potentially dangerous aliens against the humanitarian concerns that necessarily arise when such an alien is illegally present in the United States but is unreturnable because the designated country of deportation will not accept him. The statute thus provides for release at the discretion of the Attorney-General under terms that impose minimal demands on aliens who wish to live and work in the community while awaiting deportation - that they not endanger other persons or property, and that they not abscond to avoid further proceedings or eventual enforcement of their immigration orders.

12. The statutory and regulatory guidance regarding the detention and release of criminal alien offenders who remain in the United States although ordered deported is presently provided by the transition period custody rules (TPCR) in section 303 (b) (3) (b) of IIRIRA, if their administrative immigration proceedings commenced before 1 April 1997.

13. The custody and release of aliens who were denied admission or ordered excluded from the United States in proceedings that commenced before 1 April 1997 continue to be governed by the statutory scheme in place prior to that date. If the Attorney-General determines that immediate exclusion is not practicable or proper, such aliens may be paroled from custody (8 USC sections 1227 (a), 1182 section 2 (d) (5) (a) (1994, supp. 1997)).

14. Immigration parole is discretionary and authorized on a "case-by-case basis for urgent humanitarian reasons or significant public benefit" (8 USC section 1182 section (d) (5) (a) (supp. 1997)). An Immigration and Naturalization Service (INS) district director thus may parole an excluded alien whose continued detention is not in the public interest (8 CFR section 212.5 (a) (5)).

15. Criminal aliens denied admission or found deportable in removal proceedings commenced after 1 April 1997 may be conditionally released at the end of the 90-day removal period unless the Attorney-General determines that the alien is a risk to the community or unlikely to comply with the order of removal (8 USC section 1231 (a) (supp. 1997)). Consideration is given to such factors as the alien's criminal history, rehabilitation or recidivism, and relatives or other equities in the United States (8 CFR section 241.4 (1998)). Inadmissible aliens under final orders of removal may apply to the district director for parole; deportable aliens under final orders of removal may also appeal the district director's custody determination or seek amelioration of the conditions under which release has been approved before the Board of Immigration Appeals (see, generally, 8 CFR section 236 (1998)).

16. In short, for criminal aliens who cannot be promptly removed from the United States, IIRIRA section 303,.amended INA section 241 (a) (6) and the Attorney-General's statutory parole authority eliminate the possibility of indefinite detention without discretionary review pending efforts to return an alien to his own country.

17. The Government accordingly contends that international law is not violated by the detention of dangerous criminal aliens unlawfully present in the United States; that the applicable statutes, administrative regulations and judicial precedent reflect a thorough weighing of the interests of the United States and those of the individuals subject to removal proceedings.

18. In the light of the above, the Government dealt with the case of César Manuel Guzmán Cruz. According to the Government, César Manuel Guzmán Cruz is an alien subject to the provisions of law for excludable aliens, as he was subject to proceedings that commenced prior to 1 April 1997. He was subject to a final exclusion order on 30 April 1992. He has been convicted of several crimes, including second degree murder, an aggravated felony offence. As a Cuban citizen who is not on the list of repatriation cases which the Government of Cuba will accept, he is also subject to regular parole determinations and revocations. His case is automatically reviewed each year, but it is considered that his release would endanger the safety of other persons or property. Consequently, he has not been granted any temporary parole since 1992.

19. The Working Group notes that the Government does not deny that César Manuel Guzmán Cruz has completed serving the sentence for which he was convicted and that in fact it has been well over seven years since the sentence was completed. Mr. Guzmán Cruz cannot be detained indefinitely because he is not on the list of repatriation cases which the Government of Cuba will accept. In these circumstances, the denial of parole for more than seven years and the absence of reasons in the Government's reply as to why his continued detention is deemed necessary render his detention arbitrary.

20. The Working Group is of the opinion that even if the law required that an excluded alien must demonstrate that his release from detention will not endanger the safety of other persons or property, such a harsh condition, for which it is, in and of itself, difficult to adduce demonstrable proof, if continued to be applied for several years after completion of a sentence would render such detention arbitrary. Such is the present case. The Working Group therefore considers that the detention of Mr. Guzmán Cruz is in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and falls under category III of the categories of cases submitted for the Group's examination.

21. Accordingly, the Working Group requests the Government to take the necessary measures to remedy the situation of the above-mentioned individual and to bring it into conformity with the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 1 December 1999

OPINION No. 34/1999 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 4 May 1998

Concerning Israel Sacerio Pérez

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source but did not receive its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. Israel Sacerio Pérez, aged 51, a Cuban refugee, arrived in the United States in 1964. He was convicted of drug possession in 1991 and sentenced to 37 months' imprisonment, which he served at the Rochester Federal Penitentiary, Rochester, Minnesota, starting on 16 August 1991. On 29 April 1994, he was transferred to the Orleans Parish Prison, Federal Division, in New Orleans, Louisiana, where he is still detained, almost five years after having served his full sentence.

6. In its response dated 15 October 1998, the Government justified both on facts and in law the continued detention of Israel Sacerio Pérez. The Government first explained the applicable legal regime.

7. In order to determine what law to apply where a challenge to immigration detention has been presented, recent amendments to the Immigration and Nationality Act (INA) must be considered. In any particular case, the relevant facts in determining what statutes and regulations govern detention are the date the alien's immigration proceedings commenced, whether the alien is under a final order of exclusion, deportation, or removal, and whether the alien has been convicted of a serious criminal offence enumerated in the statute.

8. Before passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law No. 104-208 (30 September 1996), courts held that the Attorney-General had statutory authority to detain inadmissible aliens subject to final orders of exclusion, citing the Attorney-General's express authority to detain inadmissible aliens pending a hearing before an immigration judge, her obligation to deport such aliens immediately unless she determines that immediate deportation is impracticable or improper, and her discretionary authority to grant (and revoke) immigration parole. These rules still apply to aliens whose exclusion proceedings commenced prior to 1 April 1997 (8 CFR sections 235.3 (e) and 241.20).

9. The Attorney-General was directed to detain excluded aliens convicted of aggravated felony crimes by former INA section 236 (e), 8 USC section 1226 (e) (1994), in addition to the Immigration Act of 1990, Public Law No. 101-649 (29 November 1990). The courts construed former section 236 (e) as a limit on the release or immigration parole of excludable aliens (rather than a limit on the authority to detain such aliens). Pre-IIRIRA section 236 (e) still applies to aliens in proceedings initiated before 1 April 1997.

10. The Immigration and Nationality Act addresses the detention and release of illegal aliens both pending removal proceedings and pending actual removal from the United States. It should be emphasized that United States law has always contemplated that any alien denied admission to the United States or ordered deported from the country will be promptly returned to his/her own country or to a third country willing to accept him/her. Current law contemplates that such removal will occur within 90 days of a final order requiring an alien to leave the United States. Further, while the statute is more restrictive regarding the detention and release of aliens in immigration proceedings who have been convicted of certain enumerated crimes, the restrictions are clearly aimed at individuals convicted of serious or repeated offences, among whom the incidence of further criminal activity and flight to avoid deportation has been well documented.

11. The Government argues that the case inquired into by the Working Group involves a criminal alien who cannot be promptly repatriated because his own Government has failed to issue travel documents or otherwise honour its obligation under international law to accept the return of its nationals. Because of recent amendments to the immigration statute, different provisions of law may apply depending on the effective dates of the legislation and when proceedings commenced in an individual alien's case. While many of the recent changes reflect the heightened concern of the United States Congress with criminal aliens who commit further crimes and fail to comply with immigration orders, the statute uniformly reflects a careful balancing of the interests of the United States and the need to protect its lawful inhabitants from

potentially dangerous aliens against the humanitarian concerns that necessarily arise when such an alien is illegally present in the United States but is unreturnable because the designated country of deportation will not accept him. The statute thus provides for release at the discretion of the Attorney-General under terms that impose minimal demands on aliens who wish to live and work in the community while awaiting deportation - that they not endanger other persons or property, and that they not abscond to avoid further proceedings or eventual enforcement of their immigration orders.

12. The statutory and regulatory guidance regarding the detention and release of criminal alien offenders who remain in the United States although ordered deported is presently provided by the transition period custody rules (TPCR) in section 303 (b) (3) (b) of IIRIRA, if their administrative immigration proceedings commenced before 1 April 1997.

13. The custody and release of aliens who were denied admission or ordered excluded from the United States in proceedings that commenced before 1 April 1997 continue to be governed by the statutory scheme in place prior to that date. If the Attorney-General determines that immediate exclusion is not practicable or proper, such aliens may be paroled from custody (8 USC sections 1227 (a), 1182 section 2 (d) (5) (a) (1994, supp. 1997)).

14. Immigration parole is discretionary and authorized on a "case-by-case basis for urgent humanitarian reasons or significant public benefit" (8 USC section 1182 section (d) (5) (a) (supp. 1997)). An Immigration and Naturalization Service (INS) district director thus may parole an excluded alien whose continued detention is not in the public interest (8 CFR section 212.5 (a) (5)).

15. Criminal aliens denied admission or found deportable in removal proceedings commenced after 1 April 1997 may be conditionally released at the end of the 90-day removal period unless the Attorney-General determines that the alien is a risk to the community or unlikely to comply with the order of removal (8 USC section 1231 (a) (supp. 1997)). Consideration is given to such factors as the alien's criminal history, rehabilitation or recidivism, and relatives or other equities in the United States (8 CFR section 241.4 (1998)). Inadmissible aliens under final orders of removal may apply to the district director for parole; deportable aliens under final orders of removal may also appeal the district director's custody determination or seek amelioration of the conditions under which release has been approved before the Board of Immigration Appeals (see, generally, 8 CFR section 236 (1998)).

16. In short, for criminal aliens who cannot be promptly removed from the United States, IIRIRA section 303, amended INA section 241 (a) (6) and the Attorney-General's statutory parole authority eliminate the possibility of indefinite detention without discretionary review pending efforts to return an alien to his own country.

17. The Government accordingly contends that international law is not violated by the detention of dangerous criminal aliens unlawfully present in the United States; that the applicable statutes, administrative regulations and judicial precedent reflect a thorough weighing of the interests of the United States and those of the individuals subject to removal proceedings.

18. In the light of the above the Government dealt with the case of Israel Sacerio Pérez. According to the Government, Israel Sacerio Pérez is a non-Mariel Cuban subject to a final order of deportation issued on 26 May 1994. He is not on the repatriation list of individuals (restricted to persons who came via Mariel) whose return the Government of Cuba is willing to accept. He stands convicted of multiple offences, including three aggravated felony offences for possession with intent to distribute illegal drugs. Detention of deportable criminal aliens whose deportation proceedings commenced prior to 1 April 1997 is currently governed by the transition period custody rules (TPCR). The Government contends that since Mr. Sacerio Pérez cannot be returned to his country of origin (as the Government will not accept his return), the Attorney-General has, in the exercise of her discretionary authority under the TPCR, considered that if released from custody he would pose a threat to the community.

19. In the case of Israel Sacerio Pérez, even though the final order of deportation was issued on 26 May 1994, the Government does not give any details of the alleged multiple offences of which Mr. Sacerio Pérez was convicted, including possession with intent to distribute illegal drugs. Implied in the statement of Government is that no distribution of drugs took place. That Mr. Sacerio Pérez is a non-Mariel Cuban whose return his Government will not accept cannot justify his being indefinitely detained. Five years of detention after completion of sentence, without even a temporary parole, is much too long. That individuals who have been convicted for offences and have served their sentence fully, may continue to be a threat to the community when released applies to citizens as well as aliens liable to deportation and cannot be the legal basis for continued prolonged detention; such reasoning would render the continued deprivation of liberty arbitrary.

20. The Working Group is of the opinion that the detention of Israel Sacerio Pérez is arbitrary, for the reasons adduced above, and is in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. Such prolonged detention without reasonable cause would fall within category III of the categories of cases submitted for the Group's examination.

21. Accordingly, the Working Group requests the Government to take the necessary measures to remedy the situation of the above-named individual so as to bring it into conformity with the provisions of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

Adopted on 1 December 1999

OPINION No. 35/1999 (TURKEY)

Communication addressed to the Government on 1 June 1999

Concerning Abdullah Öcalan

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for providing timely information.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The information available to the Group - beyond the original communication - consists of two documents furnished by the Government, namely:

(a) The report of the Ad Hoc Committee of the Bureau to ensure the presence of the [Parliamentary] Assembly [of the Council of Europe] at the trial of Abdullah Öcalan (document 8502);

(b) A report by Amnesty International accompanied by a government submission to the Working Group refuting Amnesty International's allegations.

5. According to this information, Abdullah Öcalan, born on 14 April 1949, a Turkish national, leader of the PKK (Kurdish Workers' Party), was arrested in Nairobi, Kenya, on 15 February 1999 and transferred, blindfolded, to Turkey by plane. Following his arrest, which was effected without a warrant, it is alleged that Mr. Öcalan was not given a fair trial for the following reasons:

(a) Mr. Öcalan was incarcerated on the island of Imrali, which was declared a military zone, the prison having been evacuated before his arrival, and remained incommunicado for 10 days while being interrogated in secret by members of the special forces, some of whom were masked, and, during the final two days (21 and 22 February), by a judge accompanied by a court assistant who produced a transcript of the interrogation. Thus, he was brought before a judge only on the seventh day of that period, and it was not the judge's task to rule on the legality of his detention but to formalize, in adversarial proceedings, the procedure in absentia to which Mr. Öcalan had been subject before his arrest;

(b) Besides the fact that he was not allowed access to a lawyer until the tenth day after his arrest, Mr. Öcalan's right to a defence is said to have been subject to the following restrictions:

(i) Only two interviews per week, initially of 20 minutes, later of 45 minutes, and lastly of one hour each; the interviews were cancelled on several occasions (lawyers stopped and questioned, permission refused, bad weather);

(ii) His lawyers were not permitted to bring writing implements or printe documents, including items from the case file;

(iii) In breach of the principle of confidentiality (article 144 of the Turkish Code of Criminal Procedure), the visits took place with guards posted within earshot;

(iv) For the court hearings, Mr. Öcalan was placed in a transparent cage so that his lawyers had no opportunity to communicate with him orally or in writing;

(v) His lawyers were not able to obtain a copy of the case file (45 volumes) until two weeks before the trial commenced;

(c) His lawyers were harassed on a number of occasions:

(i) On 25 February Ahmet Zeki and Hatice Korkut were set upon as they arrived at the quayside for their first visit to the island;

(ii) The lawyers received abusive and threatening anonymous telephone calls;

(iii) At a press conference held by the lawyers at the Press Museum in Cagaloghe, a crowd gathered outside the building shouted hostile slogans;

(iv) On his way to the press conference, Osman Baydemir was arrested and detained for 24 hours for statements he had made to the press arguing for the right to a fair trial;

(v) At the end of the trial on 24 March, despite appeals for calm from the court president, the lawyers, threatened by the civil parties to the suit, were forced to leave the court building through a window;

(vi) On 9 April, Ahmet Zeki Okçuolgu and Even Keskin were subjected to verbal and then physical abuse in Taksim Square in Istanbul;

(vii) Hiyazi Bulgan and Irfan Dündar were struck by uniformed policemen on court premises;

no inquiry was ever initiated into these incidents;

(d) The presumption of innocence was compromised by the communication to the press of details of the case for the prosecution even before they were made known to the court and lawyers;

(e) The principle of adversarial proceedings (equality of arms) was compromised when the records of the proceedings in absentia mentioned above were added to the file without reopening the discussions;

(f) The European Court of Human Rights has ruled (case *Incal v. Turkey*) that the presence of a military judge in the State Security Court was contrary to the principles of independence and impartiality, which are essential prerequisites for a fair trial. Between 31 May and 23 June, however, a military judge sat in the State Security Court. In the face of repeated criticism, the Constitution was amended so that a civilian judge could take his place. Encouraging though this reform may be, it took place during the trial and a reopening of the discussions ab initio should therefore have been ordered; the fact that the civilian judge had been present during the discussions from the outset of the trial does not suffice for a correct procedure since he was not sitting on the bench.

6. In its reply and subsequent submission refuting the report of Amnesty International, the Government argues, on the subject of Mr. Öcalan's arrest in Kenya and transfer to Turkey, that "the Republic of Kenya apprehended the accused, who illegally entered Kenyan territory; consequently, Turkey did not exercise any power or competence of extraterritorial police in the conditions that led to his apprehension by the Kenyan authorities. As soon as the plane entered the Turkish air zone, the headband which had been put on his eyes by the Kenyan authorities was taken off", the object of the blindfolding of Mr. Öcalan for a brief period being to prevent the leader of a very dangerous terrorist organization from identifying the individuals accompanying him, so as to avoid reprisals.

7. In response to the allegations, the Government raises the following points:

(a) Detention in secret. The delays in bringing Mr. Öcalan before a judge and in allowing him access to lawyers only after 10 days were due to legal reasons and poor weather conditions.

(i) From the legal viewpoint, "the period before Öcalan was questioned before being allowed to see his lawyer was longer than in normal cases, but this was not an investigation of ordinary crime. It was an investigation spanning 15 years of terrorist activity". Moreover, the maximum time for detaining someone in custody before the State Security Court is, according to the Turkish Code of Criminal Procedure, four days. In the case of a complex inquiry it may be extended by three days (i.e. seven days altogether), at the request of the Public Procurator and with the consent of a judge. That was done in the instant case. Hence, following his arrest Mr. Öcalan was incarcerated for seven days before being brought before a judge and 10 days before being given access to a lawyer;

(ii) On the second point, the Government states that the weather was so bad that Imrali island was unreachable by sea or by air, so that the first visit by the lawyers could not take place before 25 February 1999, whence the unusual delay of 10 days;

(b) Criticisms of the restrictions imposed on the rights of the defence, the lawyers in particular:

(i) Duration of interviews. According to the Government, the duration of the interviews was not limited, the visits ending when the participants wished. On the other hand, it is true that the lawyers were not permitted to take writing implements, pens and paper being provided for them by the prison administration;

(ii) Lack of confidentiality. The Government maintains that, Mr. Öcalan being so dangerous, guards had to be present for security reasons, but they were at a distance where they could not overhear the interviews with the lawyers. The Government adds that when the lawyers challenged the situation Mr. Öcalan dismissed their objections, stating on several occasions that he had been questioned freely during his detention;

(iii) Inability to communicate with Mr. Öcalan during the hearing. The Government emphasizes that, for security reasons, individuals do appear in court protected by a transparent cage in other countries whose democratic credentials are not challenged - Italy for example - and that in fact, contrary to the allegations, the lawyers could communicate with Mr. Öcalan;

(iv) Transmission of the case file less than two weeks before the start of the trial. The Government offers no explanation;

(c) Molestation of the lawyers. This is not contested by the Government, which expresses its regret, but explains that account must be taken of reactions among the family members of the PKK's numerous victims. It appears that these incidents very often took place before the police had had time to intervene;

(d) Presumption of innocence compromised by transmission of the case file to the press before their transmission to the court and lawyers. The Government offers no response;

(e) Proceedings in absentia before the trial. The Government argues that it was not necessary to reopen the discussions ab initio, Mr. Öcalan having confessed before the court to all the charges of which he stood accused;

(f) Military judge on the bench. The Government asserts that the status of the military judge who sat for two thirds of the trial was comparable to that of a "British Judge-Advocate General's department"; to allay criticism, he was replaced by a civilian judge, and this required a constitutional reform.

8. In the light of the foregoing, the Working Group considers it appropriate to base its Opinion on the following points. It considers as generally established the fact that a number of breaches of the principles guaranteeing the right to a fair trial took place; the question it must answer is which, among these breaches, are of such gravity as to render Mr. Öcalan's detention arbitrary within the meaning of category III of the cases submitted for the Group's consideration.

9. Among the breaches of the right to a fair trial which might be regarded as not meeting that measure of gravity, are for example, the fact that Mr. Öcalan was blindfolded for all or part of his transfer by air; that the writing implements which the lawyers needed during their visits were supplied by the prison administration; that Mr. Öcalan attended the hearing protected by a transparent cage; or that in absentia proceedings dating from before the trial were joined with the trial proceedings, inasmuch as:

(a) First, the facts, which were repeated in toto in the summing-up for the prosecution, were all formally acknowledged by Mr. Öcalan when he spoke in court, conducting his defence from the political standpoint, as he put it;

(b) Second, Mr. Öcalan did not dispute that he had committed the offence defined in article 125 of the Criminal Code: "Whoever commits an act intended to put the entire or a part of the territory of the State under the sovereignty of a foreign State or to decrease the independence or to disrupt the union of the State or to separate a part of its territory from the administration of the State, shall be punished by penalty of death."

10. On the other hand, other allegations meeting the criterion of greater gravity can be allowed to stand either because the Government has not provided a satisfactory response, or because the allegations have not been challenged. The Group considers unsatisfactory the following points:

(a) The explanation that Mr. Öcalan's lawyers could not have access to him during the first 10 days of his incarceration because of poor weather conditions is hard to believe since a number of judges and officials reached Imrali island during that period by helicopter;

(b) Even if it were justified, the argument that the guards (hooded on several occasions) who were present during Mr. Öcalan's meetings with his lawyers were not able to hear their conversations is contrary to paragraph 22 of the United Nations Basic Principles on the Role of Lawyers;

(c) The threats, insults and attacks which the lawyers suffered were particularly serious; the Government, however, which does not contest the complaint that no inquiry has ever been initiated, does no more than mention that the police forces often arrived late.

11. The following points of particular gravity cannot be or have not been challenged:

(a) The Government does not contest that Mr. Öcalan was indeed held in secret for 10 days (or 11 days, given that the record refers to a transcript dated 15 February 1999 which mentions a "medical visit of the individual under interrogation"; the agreement in dates between that certificate and Mr. Öcalan's transfer by air (during which, according to the Government, he was examined by a doctor), justifies the conclusion that the medical certificate was drawn up during a first round of questioning in the airplane which, in that case and in the Group's view, can be assimilated to a place of detention). Placing Mr. Öcalan in secret detention during this initial period is all the more serious - as emphasized in the legal opinion attached to the report of the Ad Hoc Committee - "as access to counsel is of determinatory character for the defendant during the detention period since many prosecutions in state security court cases are based on statements taken from the accused during the pre-trial phase" (appendix 8, sect. 2, third paragraph);

(b) While the "demilitarization" of the State Security Court is without question a step forward for future cases, it is less clear that the circumstances in which it took place were conducive to respect for the right to a fair trial;

(c) As the Ad Hoc Committee points out in its report, "In the Incal case, the European Court of Human Rights made clear that the presence of a military judge amongst the State Security Court entailed a violation of the right to a fair trial" (report, para. 22). To implement the European Court's decision, it would have sufficed, as Mr. Öcalan's lawyers requested at the opening of the trial, to adjourn the proceedings until the vote on the constitutional reform (ibid.), especially since the amendment was finally adopted after proceedings had been suspended for only five days. Yet the application for adjournment, although evidently justified, was denied.

12. Hence, the Working Group finds:

(a) From the response of the Government, it transpires that the amended law did not prescribe any specific procedure to be followed in respect of cases that had been tried under the repealed law. What emerges, however, is that Mr. Öcalan's trial did not begin de novo after the amendment of the law. Since the military court could no longer try Mr. Öcalan pursuant to the amendment, he was tried by a civil court and the proceedings before it continued, taking into account the entire proceedings before the military court until the amendment of the law. The reason adduced by the Government is that the judge trying the case happened to be witnessing the proceedings in Mr. Öcalan's case before the military court. This is probably the reason why no need was perceived to commence the trial de novo. The reasons for the continuation of the proceedings by the civil court appear to be based not on any provision of law but on grounds of expediency, related to the coincidental fact that the judge appointed to try the case before the civil court had witnessed the proceedings before the military court;

(b) In the above circumstances, the Working Group is of the belief that the judge trying the case in the civil court could only have been witnessing Mr. Öcalan's trial before the military court either at his own initiative or had been nominated by the Government to do so. In either hypothesis, the Group believes that he should have disqualified himself from trying Mr. Öcalan's case. If he witnessed the proceedings in his personal capacity, he disqualified himself from being appointed a judge to try Mr. Öcalan. In the eventuality that he was nominated by the Government to witness the proceedings, he also stood disqualified. The Government's decision to nominate a sitting judge who had witnessed the proceedings in the case before the military court to the civil court on the ground that he had witnessed the proceedings is per se arbitrary. In the Working Group's opinion, for that reason alone the trial of Mr. Öcalan can be considered to be arbitrary and actuated by non-judicial considerations. All proceedings rendered pursuant to such appointment must be declared to be void and, accordingly, stand vitiated.

13. In the light of the foregoing, the Working Group delivers the following opinion:

> Considering the seriousness of some of the violations of the right to a fair trial that have been noted, the deprivation of liberty to which Abdullah Öcalan has been subject from 15 February 1999 onwards is arbitrary, as it is contrary to the safeguards laid down in article 10 of the Universal Declaration of Human Rights and falls within category III of the categories of cases submitted to the Working Group's consideration.

14. Accordingly the Working Group:

(a) Requests the Government to take the necessary steps to remedy the situation so as to bring it into line with article 10 of the Universal Declaration of Human Rights;

(b) Decides to transmit this Opinion (as amicus curiae) to the European Court of Human Rights, to which the case of Mr. Öcalan has been submitted.

Adopted on 2 December 1999

OPINION No. 36/1999 (TURKEY)

Communication addressed to the Government on 24 July 1998

Concerning Osman Murat Ülke

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for providing timely information.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the Government's cooperation. It transmitted the Government's reply to the source of the communication, which has not yet made known its comments thereon.

5. According to the source of the communication, Osman Murat Ülke publicly declared himself to be a conscientious objector ("I am not a deserter, I am a conscientious objector.") because, to use his words, he did "not want to kill people". Having burned his call-up papers, he was questioned, arrested and detained by the military authorities on several occasions, beginning on 7 October 1996, for refusal to perform military service. He received seven sentences of imprisonment of a few months each. On 4 May 1998, he was sentenced to seven months' imprisonment, bringing the total duration of the sentences to 43 months. With the exception of the period from December 1996 to 28 January 1997, Mr. Ülke has been in continuous detention since 7 October 1996.

6. According to the source, Mr. Ülke expects to be tried again for the same reason. The source maintains that Mr. Ülke's detention is contrary to article 18 of the Universal Declaration of Human Rights. Military service is compulsory in Turkey and the authorities do not recognize civilian service as a legitimate alternative in the case of conscientious objectors.

7. The Government of Turkey explains that Turkey is among the countries in the Council of Europe that do not recognize civilian service as a substitute for military service. It refers to article 3 of the European Convention on Human Rights, to which Turkey is a party and which has become an integral part of Turkish law. In the Government's view, the fact that military service is compulsory in Turkey is consistent with international law. Mr. Ülke was prosecuted not only for unwillingness to perform military service, but also for having publicly urged Turkish citizens to shun military service, which the Government describes as being "morally considered as a sacred duty to the homeland". It acknowledges that Mr. Ülke refuses to wear a uniform and to obey orders. It acknowledges that he has been tried on several occasions by a military tribunal, with his most recent sentence - to seven months and 15 days' imprisonment - dating from 11 June 1998. Mr. Ülke is detained at Eskisehir military prison.

8. The question before the Working Group is whether, after an initial conviction, each subsequent refusal to obey a summons to perform military service does or does not constitute a new offence capable of giving rise to a fresh conviction. If it does, deprivation of liberty, when applied to a conscientious objector, is not arbitrary, providing the rules on the right to a fair trial are respected. If it does not, detention must be considered as arbitrary for being in breach of the principle non bis in idem, a fundamental principle in a country where the rule of law prevails, as borne out by article 14, paragraph 7, of the International Covenant on Civil and Political Rights and, in the case of Europe, by article 4, paragraph 1, of Protocol No. 7 to the European Convention, which state that no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted. It is generally acknowledged that this principle, which is the corollary of the principle of res judicata, presupposes the meeting of three conditions: identity of the parties, identity of the purpose and identity of the subject-matter. In the case in question, the condition of the identity of the defendant (the conscientious objector) may be presumed to have been met. The same applies to the condition of identity of the purpose, since in criminal cases, unlike civil cases, the purpose is always the same: to establish guilt and fix a penalty. It remains, therefore, to determine whether there is identity of subject-matter.

9. The Working Group is of the opinion that there is, since, after the initial conviction, the person exhibits, for reasons of conscience, a constant resolve not to obey the subsequent summons, so that there is "one and the same action entailing the same consequences and, therefore, the offence is the same and not a new one" (see Decision of the Constitutional Court of the Czech Republic, 18 September 1999, No. 2, No. 130/95). Systematically to interpret such a refusal as being perhaps provisional (selective) would, in a country where the rule of law prevails, be tantamount to compelling someone to change his mind for fear of being deprived of his liberty if not for life, at least until the date at which citizens cease to be liable to military service.

10. It follows that the Working Group considers that Mr. Ülke's detention from 7 October to December 1996 was not arbitrary. Regarding the other periods, and in view of the foregoing, the Working Group considers that Mr. Ülke's detention is arbitrary, it having been ordered in violation of the fundamental principle non bis in idem, a principle generally recognized in countries where the rule of law prevails as being one of the most essential guarantees of the right to a fair trial.

11. In the light of the foregoing, the Working Group expresses the following opinion:

> The deprivation of liberty of Mr. Osman Murat Ülke from October to December 1996 was not arbitrary. His detention since 28 January 1997 is, however, arbitrary, being contrary to article 10 of the Universal Declaration of Human Rights, and it falls within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

12. The Working Group therefore requests the Government to take the necessary steps to remedy the situation so as to bring it into line with the principles set forth in the Universal Declaration of Human Rights.

Adopted on 2 December 1999

OPINION No. 1/2000 (NIGERIA)

Communication addressed to the Government on 4 May 1999

Concerning Samuel Onuoha, Elder Jonah A. Ezieme, Abel Ollawa, Onwuchekwa Ugbogu, Innocent Ogbuagu, Nwodeka Ezieme, Nduka Izuka, Modubuike Ukonu, Emeka Ezieme, Chief Orji Ezieme, Ibetwe Ezieme, Sampson Ulu Ezieme

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. By note dated 30 June 1999, the Government informed the Working Group that the 12 above-mentioned individuals, who had been detained since December 1998, were released in April 1999 following an order of the High Court. The Government denies that the detention of the above-mentioned 12 individuals was arbitrary.

4. The Working Group transmitted the reply provided by the Government to the source, who has confirmed the release of the 12 individuals mentioned above. The Working Group is in a position to render an opinion on the case.

5. Having examined all the available information before it and without prejudging the arbitrary nature of the detention, the Working Group decides to file the case of the above-mentioned 12 individuals, in accordance with paragraph 17 (a) of its revised methods of work.

Adopted on 16 May 2000

OPINION No. 2/2000 (BELARUS)

Communication addressed to the Government on 11 June 1999

Concerning Roman Radikovsky (Raman Radzikovski)

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights and its mandate was clarified and extended by Commission resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time. In the light of the allegations made, the Working Group welcomes the cooperation of the Government.

3. The Government informed the Working Group that Roman Radikovsky, who had been detained since 11 December 1997, was sentenced by the Supreme Court to four years' imprisonment on 11 June 1999 but was thereafter released under the Amnesty Act of 18 January 1999, which is applicable to certain categories of offences.

4. The Working Group forwarded the reply of the Government to the source, which has not to date provided it with its comments. As the release of Roman Radikovsky following his trial in June 1999 has been confirmed to the Working Group by another independent source, the Working Group believes that it is in a position to render an opinion on the case.

5. Having examined all the information submitted to it, and without determining whether the detention was arbitrary or not, the Working Group decides, pursuant to paragraph 17 (a) of its methods of work, to file the case of Roman Radikovsky.

Adopted on 16 May 2000

OPINION No. 3/2000 (RWANDA)

Communication addressed to the Government on 5 October 1999

Concerning Monseigneur Augustin Misago

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50 and reconfirmed it in resolution 2000/36. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having promptly provided the information requested.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group has transmitted the Government's reply to the source, which has not provided its comments to date.

5. According to the source of the communication transmitted to the Government, Mgr. Augustin Misago, born in 1943, former bishop of Gikongoro (Rwanda), was arrested on 14 April 1999 on the Kigali road. He is accused of participating in the murder of 150,000 Tutsis in his diocese, in particular of responsibility for the murder of 30 female students who allegedly asked him for protection.

6. Mgr. Misago was admitted to the Kigali central prison on 14 April 1999. A detention order was issued by the President of the Specialized Chamber of the Kigali Court of First Instance, apparently dated 20 April 1999. According to the source, the order was valid for two months beginning on 20 April 1999. However, Mgr. Misago is still being detained in the Kigali central prison.

7. According to the source, when arrested Mgr. Misago asked to be placed under house arrest for health reasons, as he suffers from hypertension. The request was refused, and the archbishop who visited him in prison on 8 June 1999 learned that he was suffering from serious respiratory problems.

8. The Specialized Chamber of the Court of First Instance opened proceedings against Mgr. Misago on 20 August 1999. The President of the Chamber read out the charges against him. Mgr. Misago argued that the copy of the entire file had been given to him late, that he had not had sufficient time to prepare his defence and that he was consequently requesting a postponement of his trial. His lawyers (two Rwandans and one Beninese) requested that he be released on bail in order to be able to appear of his own free will, and because his detention at that point was tainted with illegality. The President of the Chamber decided to render judgement in respect of both requests on 25 August 1999.

9. On 25 August 1999, at the second hearing, the court declared the request for postponement admissible and decided that Mgr. Misago's trial would begin on 14 September 1999. The court also found Mgr. Misago's application for release admissible, acknowledging that the detention order against him had ceased to be valid after 19 June 1999 and that the prosecution was doubly at fault, in that:

(a) It had not filed its case within the two-month time limit stipulated in the order;

(b) It had not requested an extension of the detention order to continue the investigation.

10. Nevertheless, despite the illegality of Mgr. Misago's detention, the President of the Specialized Chamber of the Kigali Court of First Instance decided to keep Mgr. Misago in detention.

11. In its reply, the Government acknowledges that Mgr. Misago's imprisonment from 20 June 1999 to 25 August 1999 was not based on a judicial warrant. It also acknowledges that that circumstance represents an irregularity, but stresses that it was raised before the Specialized Chamber, which also acknowledged that it was an irregularity. The Government points out that the Court decided the same day to extend Mgr. Misago's detention. To justify Mgr. Misago's detention from 20 June 1999 to 25 August 1999, the Government cites the gravity of the charge and the fear that Mgr. Misago's release might pose a threat to public security or that he might flee.

12. The Working Group notes the Court's acknowledgement that the detention of Mgr. Misago from 20 June to 25 August 1999 was illegal and considers that that detention represents a violation of the right to a fair trial, guaranteed, in particular, by article 10 of the

Universal Declaration of Human Rights, article 9, paragraph 4, of the International Covenant on Civil and Political Rights and Principles 11, paragraphs 1 and 3, and 13 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted on 9 December 1988. Having examined all the circumstances of the case, the Working Group is of the opinion that the violation of the above-mentioned norms relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty of Mgr. Misago from 20 June 1999 to 25 August 1999 an arbitrary character.

13. In the light of the foregoing, the Working Group renders the following opinion: The deprivation of liberty of Mgr. Misago from 14 April to 19 June 1999 was not arbitrary. Without prejudice to the question whether his detention for the period following 25 August 1999 was arbitrary, the Working Group declares his deprivation of liberty from 20 June to 25 August 1999 to be arbitrary as being contrary to article 10 of the Universal Declaration of Human Rights, article 9, paragraph 4, of the International Covenant on Civil and Political Rights and Principles 11, paragraphs 1 and 3, and 13 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted on 9 December 1988, and falls within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

14. Consequently, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 17 May 2000

OPINION No. 4/2000 (PERU)

Communication addressed to the Government on 29 February 1996 (Interim decision dated 3 December 1996, Decision No. 43/1996)

Concerning Sybila Arredondo Guevara

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50 and reconfirmed it in resolution 2000/36. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having provided the information requested promptly and in full.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. This case, described below, was presented to the Working Group as follows: Sybila Arredondo Guevara, an anthropologist of dual Chilean and Peruvian nationality, born in 1935, was allegedly detained in 1983 in Lima and accused of collaboration with Sendero Luminoso, terrorism, assisting Sendero Luminoso and financing subversive activities. Ms. Arredondo was allegedly sentenced to 12 years' imprisonment; the judges who tried her case, as well as the prosecutor, were hooded; the prison terms to which she was sentenced were to be served consecutively and no release date was fixed. The Group was also informed that

Ms. Arredondo has been cleared in two of the three legal proceedings still pending. According to the source, Ms. Arredondo is detained in extremely harsh conditions in the women's prison "Penal de Santa Mónica" in Chorrillos, Lima, and her state of health is a source of considerable concern.

6. Having been consulted, the Government informs the Group that Matilde María Sybila Arredondo's state of health is normal. This is the conclusion reached by Dr. Aldo Poma Torres, the forensic physician who visited her in the company of Dr. Ana María Calderón Boy, Provincial Prosecutor of the 30th Provincial Criminal Prosecution Office of Lima, on 23 August 1996.

7. With reference to Ms. Arredondo's legal situation, the Government states that she was sentenced to a 12-year custodial sentence, that an appeal for annulment was lodged and referred to the Criminal Division of the Supreme Court on 10 June 1996, with the prosecution contending that no grounds for annulment existed, and that a final judgement is pending. Concerning case No. 98-93 she was sentenced to 15 years' imprisonment and an appeal for annulment was lodged and has been with the Criminal Division since 12 August 1996, and in case No. 237-93 she was acquitted in a judgement of 28 September 1995, pending referral to the Supreme Court.

8. On 3 December 1996, the Group decided to keep the case pending until it had carried out its planned visit to Peru, which would provide it with the necessary background information, in accordance with its methods of work.

9. During its visit to Peru in February 1998, the Working Group met with Ms. Arredondo Guevara. Having obtained no new information during that meeting, the Group attempted to obtain further clarifications concerning the case and was informed that the case of Ms. Arredondo Guevara had been transmitted to the Human Rights Committee on 17 November 1995, under the Optional Protocol to the International Covenant on Civil and Political Rights, and had been considered by the Committee and transmitted to the Government on 16 April 1996.

10. The Working Group has ascertained that the case is being considered by the Human Rights Committee, on the basis of the same facts and allegations as the communication received by the Group. Pursuant to paragraph 25 (d) of its methods of work, the Group decides to transmit the case of Ms. Arredondo Guevara to the Human Rights Committee without expressing an opinion on the arbitrary nature of the detention.

Adopted on 16 May 2000

OPINION No. 5/2000 (CHILE)

(This opinion will be reissued for technical reasons)

OPINION No. 6/2000 (PAKISTAN)

Communication addressed to the Government on 11 June 1999

Concerning Mohammed Salim

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1977/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the source, Mohammed Salim was arrested early on 1 June 1998 for alleged involvement in the murder of three police officers which took place in an alley close to his residence. He was 14 years old at the time of his arrest. He was reportedly not informed of the charges against him, was detained in police custody with adults for 12 days and was then transferred to a juvenile jail, where he was ill-treated. Subsequently, he allegedly was tried

along with other adults by a military court in Karachi, convicted and sentenced to death in December 1998. The trial allegedly violated international standards for a fair trial. Eventually, Mohammed Salim was acquitted in January 1999, due to lack of evidence.

6. According to the source, in February 1999, the Supreme Court of Pakistan declared such military courts unconstitutional, and any convictions and sentences handed down by those courts which had not yet been implemented were declared null and void.

7. The courts were subsequently abolished. Mohammed Salim was thereupon rearrested on 13 May 1999 and charged for the same offence and again placed in detention. He is currently being retried for the same offence for which he was tried before by the military court.

8. In the light of the allegations presented by the source, which have not been denied by the Government although it had the opportunity to do so, the Working Group finds that the above-named person, who is a minor, was arrested with adults for alleged involvement in the murder of three police officers, that he was detained for 12 days together with adults, and that he was tried along with adults being prosecuted in the same case. The Working Group also finds that, after being sentenced to death in December 1998 at first instance by a court later declared unconstitutional and abolished, Mohammed Salim was acquitted on appeal in January 1999 for lack of evidence. Above all, the Working Group finds that he was rearrested by the police on the same charges as those in respect of which he had been acquitted, this being contrary to the non bis in idem rule set forth in article 13 of the Constitution of Pakistan and a general principle of law.

9. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mohammed Salim is arbitrary, as it cannot be justified on any legal basis, and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group. His detention is also in violation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

10. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation.

Adopted on 17 May 2000

OPINION No. 7/2000 (ALGERIA)

Communication addressed to the Government on 12 April 1997

Concerning Rachid Mesli

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50 and reconfirmed it in resolution 2000/36. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. In opinion No. 20/1999 of 16 September 1999, the Working Group decided, in accordance with paragraph 17 (d) of its methods of work, to shelve the case of Mr. Rachid Mesli provisionally, since it was not able to obtain sufficient information on the case, in particular whether any contacts Mr. Mesli might have had with persons suspected of belonging to armed groups had been in his capacity as defender of individuals detained, persecuted or illegally confined, or in that of a member of, or collaborator with, such groups.

3. Referring to document E/CN.4/2000/4, the Working Group's report to the fifty-sixth session of the Commission on Human Rights, which contained the above-mentioned opinion, the Government of Algeria, in a letter dated 10 March 2000, informed the Working Group that, owing to clemency measures taken by the President of the Republic on 5 July 1999, Mr. Mesli had been released.

4. Consequently, without expressing an opinion on the arbitrary nature of the detention of Mr. Rachid Mesli, and in accordance with paragraph 14 (a) of its methods of work, the Working Group decides to shelve the case of Mr. Rachid Mesli.

Adopted on 17 May 2000

OPINION No. 8/2000 (CHINA)

Communication addressed to the Government on 19 March 1999

Concerning Jigme Gyatso

The State has signed but not yet ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source. To date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Group, Jigme Gyatsu, a monk residing in Vartha village, Kansu province, was arrested on 30 March 1996 at the Tsongla Yangzom restaurant in Lhasa, apparently by Public Security Bureau officials. Upon arrest, he was taken to the anti-riot department in Lhasa, where he was detained for one day and one night. The

following day, he was transferred to Gutsa Detention Centre, where he was kept until March 1997. He was tried in May 1997 before the Intermediate People's Court in Lhasa and subsequently sentenced to 15 years' imprisonment, having been convicted of disseminating counter-revolutionary propaganda, incitement and having illegally formed an association, the Association of Tibetan Freedom Movement.

6. Three months after his conviction, Jigme Gyatso was transferred to Drapchi Prison, where visiting rights are said to have been entirely suspended. According to the source, who was able to visit the prison, the head of Jigme Gyatso was covered with a bandage and he was said to be suffering from jaundice. After protests occurred at Drapchi Prison in May 1998, he is said to have been placed in solitary confinement.

7. Jigme Gyatso had joined Gaden monastery in 1987 where he became involved in pro-independence activities. He distributed leaflets and pasted wall posters around the monastery and in nearby Lhasa. On an unspecified date in 1988 or 1989, he formed, together with friends, an organization called the Association of Tibetan Freedom Movement. In 1992, he led a major demonstration in Lhasa, in the course of which many of the demonstrators were arrested by the Public Security Bureau and anti-riot department officers. Jigme Gyatso was not arrested at that time, although officials suspected him of involvement in the demonstration and kept him under close surveillance.

8. After the arrest of a fellow member of the Association on 2 July 1993, an arrest warrant was issued for Jigme Gyatso. The authorities continued to search for him until he was apprehended on 30 March 1996.

9. In its reply, the Government explains that Jigme Gyatso, from Xiahe in Gansu province, made plans to establish an illegal organization and engage in activities with a view to dividing the country and damaging its unity in January 1992. His actions were contrary to Chinese law and amounted to a criminal offence. On 30 March 1996 he was taken in for questioning by the Tibetan public security authorities, in accordance with the law, and was subsequently arrested with the approval of the Lhasa Municipal People's Procuratorate. On 25 November 1996 the Lhasa Municipal Intermediate People's Court found him guilty under articles 98, 102, 51, 52, 22, 23 and 24 of the Penal Code and sentenced him to 15 years' imprisonment and deprivation of political rights for five years. He is currently serving his sentence in the Tibet Autonomous Region Prison (referred to in the communication as Drapchi) and is in normal health. Since his committal to prison, Jigme Gyatso has always been confined with other inmates: he has never been placed in solitary confinement and enjoys normal visiting rights.

10. The Government notes that China fully guarantees people's lawful freedom of speech and association. Its Constitution and laws clearly state that citizens have the right to freedom of speech, the press, assembly and association and that the exercise of those rights is guaranteed by law. But the Constitution also stipulates that citizens of the People's Republic of China, in exercising their freedoms and rights, may not infringe upon the interests of the State, of society or of the collective, or upon the lawful freedoms and rights of other citizens. This is consistent with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other relevant international human rights instruments. Article 20 of the Universal Declaration and articles 19 and 22 of the International Covenant state that in

exercising their rights and freedoms, including those of speech and association, individuals are subject to necessary restrictions imposed by law and must not infringe national security, public safety, public order or the rights and freedoms of others.

11. Jigme Gyatso planned to found an illegal organization and sought to divide the country and damage its unity. This was not merely a breach of Chinese law and a crime, but also a breach of the provisions of international human rights instruments which ought to be punished anywhere.

12. The question is whether, in expressing opinions in favour of the independence of Tibet and in founding the Association of Tibetan Freedom Movement, Jigme Gyatso was acting within the limits of the rights recognized and guaranteed by article 20 of the Universal Declaration of Human Rights, whereby "everyone has the right to freedom of peaceful assembly and association", that is, to associate, assemble and demonstrate peacefully.

13. The Government does not deny those rights in principle and points out that under the Constitution of the People's Republic of China, Chinese citizens fully enjoy the rights to freedom of speech, the press, assembly and association, and that the exercise of those rights is guaranteed by law. It points out, on the other hand, that the exercise of those rights must not - as it maintains has occurred in the present case - infringe upon the interests of the State or of society, or upon the rights and freedoms of other citizens.

14. In order to justify the decision taken with respect to Jigme Gyatso, the Government refers to the provisions of articles 19 and 22 of the International Covenant on Civil and Political Rights, whereby the exercise of the rights to freedom of opinion, expression and assembly may be subject to restrictions, provided that the latter are prescribed by law and are in the interests of national security or public safety, public order, or the rights and freedoms of others. In this regard, the Working Group appreciates that the Government, in its reply, refers to the provisions of the International Covenant on Civil and Political Rights, which it has signed.

15. The Working Group points out, however, that paragraph 2 of article 22 of the Covenant, referred to by the Government, specifies that no restrictions may be placed on the exercise of those rights "other than those which are prescribed by law and which are necessary in a democratic society". In other words, such restrictions are admissible only if they respect all three criteria of "lawfulness", "legitimacy" and "democratic society". They should therefore:

(a) Be prescribed by law. This condition is respected in this case, since the Government in its reply referred to articles 22, 23, 24, 51, 52, 98 and 102 of the Penal Code and since the Covenant requires only a reference to the law;

(b) Be legitimate, that is to say that, in order to be admissible under the terms of the Covenant, restrictions should fulfil the legitimate concern of ensuring that the exercise of the rights guaranteed under the Covenant, in this case freedom of opinion, expression, assembly and peaceful demonstration, is not abused for purposes incompatible with a democratic society. Such incompatibility may arise, regardless of the nature of the constitutional system concerned, inter alia from:

(i) The non-peaceful exercise of freedom of opinion, expression, assembly or demonstration, i.e. resorting to violence (Universal Declaration of Human Rights, art. 20 and International Covenant on Civil and Political Rights, art. 22);

(ii) The advocacy of national, racial or religious hatred (Covenant, art. 20 (2));

(iii) Incitement to commit crimes recognized under international law, such as genocide, apartheid, the practice of slavery and serious violations of the Geneva Conventions, of 12 August 1949, on the protection of victims of war;

(iv) The requirements of a democratic society, implying firstly that the normal steps under the rule of law have been taken to preserve national security and public order and secondly, that the principle of proportionality between legitimate restrictions and the protection of national security or public order is respected.

16. In the light of the information it has available, the Working Group finds that there is nothing to indicate that the "illegal organization" to which the Government refers, which according to the source is the Association of Tibetan Freedom Movement founded by Jigme Gyatso, ever advocated violence, war, national, racial or religious hatred, or any behaviour or practices prohibited by the Covenant and that therefore Jigme Gyatso was merely exercising the right to freedom of peaceful assembly with others in order to express opinions, a right guaranteed under articles 19 and 20 of the Universal Declaration.

17. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Jigme Gyatso is arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and encourages the Government to ratify the International Covenant on Civil and Political Rights.

Adopted on 17 May 2000

OPINION No. 9/2000 (PERU)

Communication addressed to the Government on 30 June 1999

Concerning César Sanabria Casanova

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50 and reconfirmed it in resolution 2000/36. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having provided the information requested promptly and in full.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The Group welcomes the detailed information provided by the Government in response to the Group's request.

5. According to the complaint, César Sanabria Casanova was detained on 23 July 1992 near his home in Villa El Salvador, Lima, while walking to the home of the director of the school where he taught in order to suggest a social activity to be held the following day. He was alone when detained, but the police report states that he was detained together with a Sendero Luminoso militant, carrying subversive material. He was tried by a "faceless" civil court and sentenced to 30 years' rigorous imprisonment, which the Supreme Court reduced to 25 years. According to the complaint, among the grounds for the sentence was the fact that the courts considered Mr. Sanabria to have used his teaching activities to engage in propaganda for Sendero Luminoso.

6. The complaint cites various grounds on which the detention may be considered arbitrary: (a) detention without a warrant in a case where the accused was not arrested in flagrante delicto; (b) inappropriate assessment of the incriminating and exculpatory evidence; (c) lack of availability of an effective remedy to challenge the detention, as those provided by law had been suspended by the anti-terrorism laws; (d) trial by a "faceless" court.

7. In its reply, the Government maintains that none of Mr. Sanabria's human rights have been violated, as the entire proceedings have been conducted in full compliance with the legislation in force, and transcribes the norms applicable to the case.

8. In the Group's opinion, first, it is not in a position to decide whether Mr. Sanabria was detained in flagrante delicto. The offence for which he was prosecuted is that of conspiracy to commit terrorism, which involves ongoing commission of the crime and, therefore, an ongoing situation of flagrante delicto.

9. As it has repeatedly stated in opinions concerning Peru, the Group must again stress the following: it is not within the Group's mandate to evaluate evidence, nor is it in a position to do so. Deprivation of liberty is arbitrary depending on whether it falls into one of the three categories included in the Group's methods of work.

10. In its report on the mission to Peru the Group cites as a "highly positive" development in Peruvian legislation the fact that the right to habeas corpus "cannot be suspended during states of emergency" (E/CN.4/1999/63/Add.2, para. 125). It is true that it was in fact suspended from 1993 (after Mr. Sanabria's detention) to 1996, but it was later re-established, hence this section of the communication has to be disregarded.

11. Finally, as it has stated in previous opinions, the Group repeats that deprivation of liberty handed down by a faceless court, pursuant to Act No. 25,475, is contrary to the rules of due process of law (ibid., paras. 65 to 67 and 134).

12. In accordance with the contents of paragraphs 9 and 12 above, the Group considers that Mr. Sanabria's detention is arbitrary, since it falls within category III of the principles for the consideration of cases submitted to the Group.

13. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of César Sanabria Casanova is arbitrary since it is contrary to article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

14. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 17 May 2000

OPINION No. 10/2000 (PERU)

Communication addressed to the Government on 21 June 1999

Concerning Mirtha Ira Bueno Hidalgo

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50 and reconfirmed it in resolution 2000/36. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having provided the information requested promptly and in full.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The Group welcomes the Peruvian Government's prompt and complete reply to its request and the final comments of the source.

5. According to the complaint, Mirtha Ira Bueno Hidalgo, a university student, was detained in Lima on 10 August 1990, without being caught in flagrante and without an arrest warrant. She was tried for terrorism-related offences by the High Court of Lima, found innocent and released on 20 July 1991. However, the Office of the Public Prosecutor lodged an appeal for annulment with the Supreme Court of Justice, which was accepted and a new trial ordered. In this connection Mirtha Bueno was detained a second time on 15 November 1995. A new trial was conducted by the High Court of Lima, Special Division for Terrorism-Related Offences. She was sentenced to 12 years' deprivation of liberty on 20 March 1996, and her sentence was upheld by the Supreme Court of Peru on 21 July 1997.

6. The complaint maintains that the deprivation of liberty was arbitrary because when she was detained on 10 August 1990 she was not caught in flagrante and no arrest warrant was issued, that no weight was given to evidence exonerating her and that she was tried by a "faceless" court.

7. In its reply, the Government states that the trial and conviction of Mirtha Bueno does not constitute an arbitrary deprivation of liberty, as Ms. Bueno was tried by a competent, independent and impartial tribunal, and that it is not for the Working Group to evaluate the evidence used by a national court in handing down a conviction.

8. The Group would like to note, first of all, that the case at hand does not involve an infringement of the principle non bis in idem, as the communication appears to maintain. In reality, there was only one trial, as the trial which the communication refers to as a "new trial", as opposed to a "first trial", did not result in a final acquittal: the acquitted was revoked and a continuation of the trial ordered, eventually resulting in a conviction.

9. Furthermore, the Group shares the Government's view that the Group's mandate does not authorize it to act as an additional body for evaluating anew the evidence processed by national courts. It has stated as much on numerous occasions, especially in cases of communications from sources in Peru.

10. It is true that the trial which resulted in Mirtha Ira Bueno's conviction was carried out by a "faceless" court, or a court protected from publicity, for reasons which the Peruvian Government qualifies as security-related.

11. In this respect, the Group can only reiterate its conviction regarding the serious incompatibilities raised by the system of anonymous judges introduced in Peru by Act No. 25,475, which was in force from 1992 to 1998, to which it referred in its mission report (E/CN.4/1999/63/Add.2, paras. 65 to 68, 83 to 92 and 133 and 134). In the Group's opinion, the violation of the rules of due process of law represented by this exceptional system of justice is of such gravity that it confers in itself an arbitrary character on the deprivation of liberty, in conformity with category III of the Group's principles for consideration of the cases submitted to it.

12. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mirtha Ira Bueno Hidalgo is arbitrary since it is contrary to article 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

13. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 17 May 2000

OPINION No. 11/2000 (PERU)

Communication addressed to the Government on 21 June 1999

Concerning Eleuterio Zárate Luján

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having provided the information requested promptly and in full.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The Group welcomes the prompt and complete response of the Government of Peru to its inquiry and the comments provided by the source.

5. According to the complaint, Eleuterio Zárate Luján was arrested at his home in Lima, Villa El Salvador district, on 3 July 1993 by agents of the National Counterterrorism Directorate (DINCOTE), Delta 3 Unit, who did not produce an arrest warrant. He was tried by the Peruvian military courts and sentenced to 25 years' imprisonment for treason, on the following grounds: (a) terrorist attack resulting in the death of the Deputy Mayor of Villa El Salvador, María Elena Moyano; (b) terrorist attack on the Fuji Restaurant; and (c) killing of a citizen considered to be a "soplón" (informer). The complaint maintains that the charges are not true, and that in any case the first two acts were committed by their perpetrators before the enactment of Decree-Law No. 25,659 of 13 August 1992, which therefore could not be applied against him without seriously infringing article 15 of the International Covenant on Civil and Political Rights.

6. The complaint also states that Mr. Zárate was tried by "faceless" courts, which are not independent and impartial, and that the alleged evidence against him is based on the testimony of "reformed terrorists", which was not corroborated by other evidence as required by law. It states that an appeal was lodged before the Supreme Council of Military Justice, but that six months later it had still not been resolved. Mr. Zárate remained in detention through the submission of the communication on 12 April 1999.

7. In a report dated 22 September 1999 the Government maintains that Mr. Zárate was in an area of the country declared to be an emergency area when arrested; accordingly, under both Peruvian legislation and article 4 of the International Covenant on Civil and Political Rights, the judicial guarantee requiring a warrant in order for an arrest to be carried out was not in effect.

8. The Government adds that the Supreme Council of Military Justice of Peru, in a decision of 26 May 1999 - subsequent to the submission of the communication - annulled the sentence of the Supreme Special Military Tribunal of 2 June 1994 of 25 years' imprisonment against Mr. Zárate, precisely because the acts in question had been committed before the entry into force of Decree-Law No. 25,659, characterizing certain forms of terrorism as treason. The first trial having been declared null and void, a new trial before an ordinary court was ordered and is under way.

9. The Government also maintains that, in any case, the military courts cannot be criticized as lacking independence and impartiality, and that there has been no exhaustion of domestic remedies, which is a requirement for proceedings before the Working Group.

10. That in fact, and only since 26 May 1999, Mr. Zárate is being tried for the offence of attacking the Fuji Restaurant, as he was cleared of the offence against María Elena Moyana and no mention is made of the offence against the person considered to be an "informer".

11. The Group notes that from 3 July 1993 - the date of his detention - through the beginning of his ordinary court trial for the attack on the Fuji Restaurant, Mr. Zárate was deprived of liberty through the retroactive application of criminal legislation - Decree-Law 25,659 of 13 August 1992 - to an act committed earlier, i.e. the above-mentioned attack on the restaurant. Such deprivation of liberty constitutes a flagrant violation of article 15 of the International Covenant on Civil and Political Rights and of article 11, paragraph 2, of the Universal Declaration of Human Rights, and as such represents a case of arbitrary detention as set forth in category III of the Group's methods of work, approved on numerous occasions by the Commission on Human Rights.

12. The Group also notes that, even under domestic legislation alone, the deprivation of liberty would still be considered arbitrary, as the Peruvian Constitution in force at the time of the detention also provided for the principle of the non-retroactivity of criminal legislation against an accused person.

13. In any case, the Group would like to make two remarks in response to the reply of the Government of Peru: (a) with regard to its statement that "the lack of impartiality or independence [of the military courts] must be proved objectively rather than by mere speculation of a subjective nature", the Group notes the statement in its report on its visit to Peru in January

and February 1999, in reference to the military courts, to the effect that "Judges, especially military judges, show partiality in the treatment of accused persons" (E/CN.4/1999/63/Add.2, para. 136) and that the military justice sector "does not meet the requirements of General Comment No. 13 adopted by the Human Rights Committee to guarantee due process of law (para. 170); and (b) the public procedures established by the Commission on Human Rights in accordance with Economic and Social Council resolution 1235 (XLII) of 1967, like the procedure governed by Commission on Human Rights resolutions 1991/42 and 1997/50, are not subject to exhaustion of domestic remedies as a requirement for admissibility.

14. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Eleuterio Zárate Luján is arbitrary as being contrary to articles 11, paragraph 2, of the Universal Declaration of Human Rights and 15, paragraph 1, of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

15. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 17 May 2000

OPINION No. 12/2000 (JAPAN)

Communication addressed to the Government on 27 October 1999

Concerning Yoshihiro Yasuda

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the present case the opinions of the parties differ completely as to the facts. For the source, the deprivation of liberty is arbitrary since it was connected with Mr. Yasuda's work as a human rights lawyer; for the Government, on the other hand, the deprivation of liberty, as supported by judicial decisions, was due to acts that might constitute tax fraud and was effected in accordance with the rules of due process and with all the appropriate safeguards.

5. The submissions made by the parties do not enable a reasoned opinion to be issued on the matter.

6. The Working Group notes with satisfaction that, as stated by the Government in its reply and as confirmed by the source, Yoshihiro Yasuda was released on bail on 27 September 1999, i.e. even before the communication was forwarded to the Government, while further proceedings are being taken against him.

7. Therefore, in accordance with paragraph 17 (a) of its methods of work, the Working Group is of the view that the case should be filed, without expressing an opinion on the arbitrary nature of the detention of Mr. Yasuda.

Adopted on 17 May 2000

OPINION No. 13/2000 (PAKISTAN)

Communication addressed to the Government on 1 June 1999

Concerning Najam Sethi

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1977/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the source, Najam Sethi, editor of the national newspaper Friday Times, was arrested at 2.30 a.m. on 8 May 1999 at his home in Lahore by police. He has not been charged with any offence, and is said to be held solely for the exercise of his right to freedom of expression.

6. Twenty plainclothes and two uniformed police officers allegedly broke into his house, entered the bedroom and dragged Mr. Sethi off. Allegedly, they did not have a warrant of arrest nor permission to enter private property.

7. Mr. Sethi's wife, Jugnoo Mohsin, filed three petitions in the Lahore High Court: a habeas corpus petition to produce Mr. Sethi before the court, a writ petition to have a medical examination administered, and a petition requesting that the police record a complaint regarding Mr. Sethi's unlawful arrest and abduction. On 10 May 1999, the Lahore High Court asked the State of Punjab to respond to the allegations brought forward by Mr. Sethi's wife. On the same day, the Deputy Attorney-General of the State of Punjab stated that Mr. Sethi was not in the custody of the federal investigating agency.

8. In a further hearing on 12 May 1999, the Lahore High Court dismissed all three petitions on the grounds that Mr. Sethi was under investigation for anti-State activities in the custody of military intelligence (i.e. Inter Services Intelligence (ISI)), over which the High Court had no jurisdiction. It reportedly admitted that no charges had been brought against him. However, the acting Director-General of the ISI Public Relations Department reportedly stated that The News, a local newspaper, had said on 12 May 1999 that the ISI had nothing to do with Mr. Sethi's arrest.

9. According to the source, Mr. Sethi's wife filed a petition in the Supreme Court of Pakistan, reportedly asking for Mr. Sethi to be produced in court and for his defence to be informed of the grounds for his continued detention. A bench of three Supreme Court judges heard the petition on 17 May 1999 and allowed Mr. Sethi to meet with his family members and lawyer on that day. At a further hearing on 20 May 1999, the Supreme Court ruled that Mr. Sethi be allowed to meet with his family members and lawyer twice a week.

10. Mr. Sethi's wife also reportedly challenged the judgement of the Lahore High Court and contended that Mr. Sethi, as a civilian, could not be arrested under the Army Act. The Supreme Court of Pakistan commenced the hearing of appeal on 31 May 1999 to determine whether the ISI was legally empowered to arrest Mr. Sethi under the Army Act.

11. To this date, Mr. Sethi is said to be held by the ISI in a solitary confinement cell, without light, and has not been charged with any criminal offence. These actions allegedly contravene articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights.

12. In the light of the allegations made by the source, which have not been denied by the Government although it had the opportunity to do so, the Working Group finds that the above-named was arrested at his home in Lahore on 8 May 1999 by the Pakistani police, without a warrant. His wife filed a habeas corpus petition before the Lahore High Court, followed by a petition to have the above-named medically examined, and a third petition complaining about his unlawful arrest. The Lahore High Court dismissed all three petitions on the grounds that Najam Sethi was under investigation for anti-State activities by military intelligence, over which the High Court had no jurisdiction. Mrs. Sethi then challenged the judgement before the Supreme Court, contending that Najam Sethi, as a civilian, could not be arrested under the

Army Act. The hearing of appeal before the Supreme Court was due on 31 May 1999. Meanwhile, the above-named was held in solitary confinement by military intelligence without being charged.

13. According to a source, government officials had alleged that Najam Sethi's arrest was due to a speech he reportedly made on 30 April 1999 in New Delhi before the Indo-Pakistani Friendship Society about problems currently facing Pakistan. Mr. Sethi's wife and journalists in Pakistan, however, maintain that his arrest was in connection with the contacts he maintained as a journalist with a BBC team inquiring into corruption in Pakistan.

14. In the Working Group's opinion, the circumstances of Najam Sethi's arrest, as reported to the Working Group, justify the conclusion that Mr. Sethi's arrest and detention are definitely related to his activities as editor of a newspaper, that is to say, with the exercise of his right to freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights.

15. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Najam Sethi is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

16. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to take the appropriate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 17 May 2000

OPINION No. 14/2000 (CHINA)

Communication addressed to the Government on 30 March 1999

Concerning Phuntsok Wangdu

The State has signed but not yet ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, but to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the information before the Group, Phuntsok Wangdu, a monk at Gaden monastery, was arrested on 7 February 1997 at his residence in Taktse county, Tibet, by officers of the Tibet Autonomous Region Public Security Bureau. It is claimed that no warrant was shown to him, and that it is not known on which relevant legislation his arrest was based.

6. According to the source, Phuntsok Wangdu joined Gaden monastery as a minor. In 1990, when officials visited the monastery to conduct a re-education campaign, 18 monks, including

Phuntsok Wangdu, were expelled from the monastery. Phuntsok Wangdu fled the country in the autumn of the same year and returned to Tibet in 1993. On 17 June 1993, Tibet Autonomous Region Public Security Bureau officers arrested him and detained him at Sangyip Prison. No reason is said to have been given for his arrest. He was held for six months, allegedly without any documents being issued related to his arrest. He then was released and certain conditions on his freedom of movement were imposed on him.

7. On 7 February 1997, he was arrested at his residence together with his brother and 19-year-old cousin. All three were held at Gutsa Detention Centre, where they are said to have been subjected to ill-treatment. In May 1997, Phuntsok Wangdu was transferred to a police station west of Lhasa, where he was interrogated for six weeks and allegedly was made to confess to crimes under duress. In July 1997, he was transferred to Gutsa Detention Centre and subjected to further interrogation; he was eventually charged with "espionage", and sentenced to 14 years' imprisonment by the People's Intermediate Court in Lhasa in June 1998. He appealed to the authorities for a retrial, on the ground that he had not committed any criminal offence. It is argued that his attitude towards the re-education campaign and his having left Tibet for almost three years between 1990 and 1993 were the only factors for which he was singled out. It has not been confirmed whether his appeal has been considered in the meantime, and the source does not know whether he remains at Gutsa or has been transferred to Drapchi Prison, where his brother and cousin were being held.

8. The Government observes that Phuntsok Wangdu illegally left China for India, where in 1991 he joined an intelligence organization. In January 1993 he was dispatched by that organization back to China to gather for it a wide variety of information using photographic and recording equipment and engaged, while in Lhasa, in seditious, violent and destructive activities aimed at the division of the State.

9. On 16 September 1997, Phuntsok Wangdu was detained in accordance with the law. His case was taken up by the Lhasa Municipal Intermediate People's Court. On 8 December 1997, the Lhasa Municipal People's Procuratorate brought charges against him. It was determined in a public hearing that Phuntsok Wangdu had been a member of a spy organization and had been commissioned to engage in espionage. On 9 February 1998, the Lhasa Municipal Intermediate People's Court sentenced him to 14 years' imprisonment for espionage and stripped him of his political rights for four years. Phuntsok Wangdu did not appeal. He is currently serving his sentence in the Tibet Autonomous Region Prison, and is in good health.

10. According to the Government, China's Constitution and laws afford Chinese citizens full freedom of speech. Article 35 of the Constitution states that citizens of the People's Republic of China have freedom of speech. During the 20 years since reforms began, China has strengthened the construction of a democratic legal system, broadened the foundations of democracy, and taken legislative, administrative and other action to guarantee citizens all their human rights and fundamental freedoms, including freedom of speech. Any citizen may express ideas critical of the Government, and that right is legally protected. No citizen may be punished for holding views different from those of the Government. Phuntsok Wangdu has been punished not because he expressed dissident opinions or views, but because he engaged in espionage which imperilled the security of the State. Any country would have punished what he did. While setting forth the freedoms of opinion and assembly, the International Covenant on Civil and

Political Rights also clearly specifies that the exercise of those rights is lawfully subject to necessary restrictions and must not harm national security or public safety, public order, or the rights and freedoms of others.

11. Article 110 of the Chinese Penal Code states that belonging to a spy organization or accepting commissions from such an organization or its agents is, if it imperils national security, punishable by a term of imprisonment of between 10 years and life. That Phuntsok Wangdu joined such an organization and accepted an assignment from it, taking part in separatist activities and imperilling the security of the State, is clearly and amply attested. The sentence passed on him by the Lhasa Municipal Intermediate People's Court was procedurally correct, imposed pursuant to the appropriate laws, fair and reasonable.

12. It follows from the above that according to the Government, Phuntsok Wangdu first of all committed an unlawful act by leaving Chinese territory for India. However, in the opinion of the Working Group he cannot be reproached for this since article 12 of the Covenant provides that everyone is free to leave any country, including his own.

13. With regard to the substance of the case, the custodial measure applied to Phuntsok Wangdu appears to be based on a conviction for the crime of espionage, which in legal terms is covered by article 110 of the Chinese Penal Code. In the Government's reply, the offence is said to have been constituted by the following acts:

(a) Returning to China with an assignment to gather information using photographic and recording equipment, although the nature of that information is not made clear;

(b) Engaging in subversive, violent and destructive activities aimed at the division of the State, but not the slightest indication is given as to the modus operandi of these activities;

(c) Belonging, with no further details provided, "to a spy organization" and, in that connection, taking part in separatist activities imperilling the security of the State.

14. The Working Group considers that Phumtsok Wangdu's expression of and support for so-called "separatist" opinions could not be regarded as reprehensible unless it was established that he had resorted to non-peaceful means, and this does not appear to be the case from the body of information available to the Working Group.

15. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Phuntsok Wangdu is arbitrary, as it contravenes articles 19 and 20 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

16. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and encourages the Government to ratify the International Covenant on Civil and Political Rights.

Adopted on 18 May 2000

OPINION No. 15/2000 (BAHRAIN)

Communication addressed to the Government on 20 July 1999

Concerning Mohamed Ali Ahmed Al-Ekry

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and re-confirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Working Group, Mohammed Ali Ahmed Al-Ekry, a 21-year-old Bahraini university student, was apprehended without a warrant and is being detained without charges at the Al-Kala Fort Prison.

6. On 15 February 1998, at 2.15 a.m., anti-riot and plainclothes policemen led by Col. Khaled Al-Wazam allegedly broke into Mohammed-Ali Ahmed Al-Ekry's house and

intimidated his family, before arresting him without a warrant. Although the authorities had not issued formal charges against Mr. Al-Ekry, it is said that the State Intelligence Service (SIS) had ordered the operation because he had participated in peaceful opposition activities against the Government. Since his arrest, Mr. Al-Ekry has been detained under the custody of the Ministry of the Interior. The State Security Law of 1974 entitles the Minister of the Interior to detain anyone whom he deems to threaten State security for up to three years without a trial.

7. In its detailed observations, which the Working Group appreciates, the Government considers that the information transmitted to the Group must be viewed against the background of the situation in Bahrain, which has for the past three years been facing a destabilization campaign by foreign-backed extremists responsible for inciting violence and intimidation within the community. Such allegations are the recognizable product of such extremists' propaganda; its source is individuals and groups outside Bahrain which have no direct knowledge of the situation and no genuine interest in human rights in Bahrain.

8. According to the information provided by the Government, Mohamed Ali Ahmed Al-Ekry was lawfully arrested on 18 February 1998 at his home by the regular police under an arrest and detention order issued by the Minister of the Interior pursuant to section 1 of the 1974 State Security Law, for violence-related activities which contravene specific articles of the 1976 Penal Code.

9. The Government underlines that no evidence or complaint has been received in Bahrain that the police broke into the subject's house, which would in any case have been unlawful.

10. The Government adds two further clarifications:

(a) Mohamed Ali Ahmed Al-Ekry has not been arrested or detained for any opinion or expression, nor for any peaceful activity, but for violence-related activities which are not only breaches of public order but are also aimed at the destruction of the rights and freedoms of others;

(b) He is not held in the Fort Prison (Al-Kala). While it is not government policy to publicly disclose the exact whereabouts of detainees, his whereabouts are well known to his family and friends who regularly visit him and have good contact with the custodial authorities. He is held in a regular place of detention and accorded all his rights of visitation, representation, welfare and medical care, strictly in accordance with the 1964 Prisons Law and regulations and international standards.

11. More generally, the Government submits that:

(a) On the one hand, all those who have been detained in connection with the civil unrest since 1994 have, without exception, been detained for their activities either as perpetrators or advocates of violence pursuant to specific articles of the 1976 Penal Code, e.g. articles 178-184 (rioting), 277-278 (arson), 279-281 (use of explosives), 219-222 and 333-343 (assault, murder and use of weapons), 156-157, 160 and 168-170 (incitement/conspiracy/publication to commit violations), etc. The police have the lawful authority to detain a suspect for investigation for up to 48 hours after arrest under article 25 of the 1966 Code of Criminal Procedure. Continued detention beyond 48 hours is by order of the court under article 79 of the Code of Criminal Procedure or by Order of the Minister of the Interior under article 1 of the 1974 State Security Law. All issues of detention, trial and release are determined by due process of law in accordance with the detailed procedures and requirements set out in the 1966 Code of Criminal Procedure, the 1974 State Security Law, the 1976 State Security Court Law and the 1976 Penal Code;

(b) On the other hand, whilst persons arrested by Order of the Minister of the Interior, pursuant to his authority under the 1974 State Security Law, may be detained for a period not exceeding three years, anyone so detained has, per section 1 of the 1974 Law, the right of appeal to the High Court of Appeal three months after arrest and thereafter every six months. If the individual does not exercise this right of appeal, the Prosecuting Authority shall do so instead in order to continue the validity for the arrest order (sect. 4). Mohamed Ali Ahmed Al-Ekry has not been denied his right to have his detention periodically judicially reviewed.

12. Further, rights of representation at judicial review of such detention are comprehensively protected by the law and the appellant and his representative are fully entitled to appear before the appeal hearing. Appellants have the right to appoint lawyers to represent them at any time after their arrest but in practice often wait until they get to the court, which is then bound by law to appoint a defence lawyer for them free of charge.

13. The Government concludes that such detentions are not arbitrary but strictly according to, and in enforcement of the law, in conformity with articles 9, 10, 19, 29 and 30 of the Universal Declaration of Human Rights and in compliance with articles 5, 7, 9, 10, 19 and 20 of the International Covenant on Civil and Political Rights (although Bahrain is not a party thereto).

14. In view of the allegations made by the source and the reply of the Government, the Working Group finds as follows:

(a) Generally speaking, first of all, the ordinary law procedure as described by the Government (detention by the police for investigation for a period of up to 48 hours under article 25 of the 1996 Code of Criminal Procedure, that period being renewable for a further 48 hours by decision of a court under article 79 of the Code) appears to be compatible with the guarantees set forth in article 9 of the Universal Declaration of Human Rights, which states that no one shall be subjected to arbitrary arrest or detention, and, more especially, with the guarantees provided for by article 9, paragraph 3, of the International Covenant on Civil and Political Rights, as invoked by the Government in its reply, which requires the person arrested to be brought promptly before a judge;

(b) However, the Working Group considers that the provision under the State Security Law allowing the Minister of the Interior to order the arrest of a person without a court warrant and to keep him in detention without trial for as much as three years is incompatible with article 9, paragraph 3, of the International Covenant on Civil and Political Rights, which states that anyone arrested shall be "brought promptly before a judge or other officer authorized by law to exercise judicial power", which plainly cannot apply to a Minister of the Interior;

(c) The Working Group further notes that the remedy enabling a detention order by the Minister to be challenged before the High Court of Appeal is available only after a period of three months following arrest, whereas article 9, paragraph 4, of the Covenant states that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful".

15. The Working Group takes note of the fact - which is not contested - that Mohamed Ali Ahmed Al-Ekry was arrested and placed in detention by order of the Minister of the Interior under the State Security Law. The Government has, moreover, failed to specify the violence-related activities of which Mr. Al-Ekry is allegedly guilty, and does not indicate where he is currently being held. The Working Group considers that such a custodial measure is not compatible with articles 9 and 10 of the Universal Declaration of Human Rights or with article 9 of the International Covenant on Civil and Political Rights, as referred to by the Government in its reply, inasmuch as detaining an individual by decision of a minister for a period of up to three years, although consistent with national law, is not in conformity with the above-mentioned international standards.

16. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mohamed Ali Ahmed Al-Ekry is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

17. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take the adequate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 18 May 2000

OPINION No. 16/2000 (ISRAEL)

Communication addressed to the Government on 24 February 2000

Concerning Rabah Abou Faour, De Gaulle Abou-Tas, Ali Alsaghir, Shamlakan Assaf, Hussein Atami, Samira Atteh, Ghandy Ayoub, Metme Dakdout, Cosette Ibrahim, Abbas Khanafir, Sulaiman Ramadan, Ahamed Samhat, Hosein Samhat, Ghassan Seied, Najwa Simhat, all of whom were released following the withdrawal of the Israeli Defence Forces (IDF) from southern Lebanon

The State is a Party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. According to the source:

(a) Mr. Abbas Khanafir, a Lebanese citizen born in 1970, was arrested on 28 December 1999 at Aynata; it is alleged that he was arrested without a warrant by members of the Southern Lebanese Army (SLA) and the Israeli Defence Forces (IDF) when he visited his family in Aynata, and refused to cooperate with the Israeli forces. He was detained at Al-Khiam detention centre and allegedly was not charged with any criminal offence;

(b) Ms. Samira Atteh, a Lebanese citizen born in 1977, was arrested on 23 November 1999 in Arnoun, southern Lebanon; she allegedly was arrested without a warrant by members of the SLA and the IDF, as she refused to cooperate with them. She was detained at Al-Khiam detention centre and was not charged;

(c) Mr. Ghassan Seied, a Lebanese born in 1965, was arrested on 16 August 1998; he was allegedly arrested without a warrant by members of the IDF, on suspicion of having participated in an attack on an IDF patrol in southern Lebanon. It is alleged that he was subjected to torture after his arrest. He was detained at Al-Khiam detention centre;

(d) Mr. Sulaiman Ramadan, a Lebanese agricultural labourer born in 1965, was allegedly arrested on 16 September 1985 in southern Lebanon; he is said to have been arrested without a warrant by members of the IDF and SLA, as he was suspected of links to the Lebanese resistance to the SLA and Israeli forces operating in southern Lebanon. According to the source, he was never charged with an offence and was held at Al-Khiam detention centre, where his health condition is said to be deteriorating, partly as a result of torture to which he was subjected;

(e) Mr. De Gaulle Abou-Tas, a Lebanese born in March 1959, was arrested on 26 August 1999 in Rmeish; he is said to have been arrested without a warrant by members of the IDF and the SLA because he refused to cooperate with either of them. He apparently was not charged and was held at Al-Khiam detention centre;

(f) Mr. Hosein Samhat, a Lebanese born in 1962, was arrested on 29 September 1999 in Aynata, southern Lebanon; he reportedly was arrested without a warrant, together with his wife and his child, by members of the SLA and the IDF, while working in his restaurant, for failure to cooperate with the Israeli forces. He was held at Al-Khiam detention centre;

(g) Mr. Ahamed Samhat, a Lebanese born in 1984, was arrested on 29 September 1999 in Aynata, southern Lebanon; he is said to have been arrested without warrant by members of the IDF, as he refused to cooperate with them. It is alleged that he was arrested together with his father and his mother, and was transferred to Al-Khiam detention centre;

(h) Mr. Hussein Atami, a Lebanese born in 1962 and at the time of arrest a cook for the United Nations Interim Force in Lebanon (UNIFIL), was arrested on 25 January 2000 at Nagura in southern Lebanon; it is said that he was arrested without a warrant by members of the IDF and the SLA. The reasons for his arrest are not known. He was held at Al-Khiam detention centre;

(i) Ms. Shamlakan Assaf, a Lebanese born in 1975 and a nurse in Nabatiah, was arrested on 23 November 1999 at Arnoun in southern Lebanon; she was allegedly arrested without a warrant by members of the SLA and the IDF, for refusing to cooperate with them. She was held at Al-Khiam detention centre;

(j) Mr. Ali Alsaghir, a Lebanese born in 1969, was allegedly arrested on 1 November 1986 at Bintjbeil in southern Lebanon; he is said to have been arrested without a warrant by members of the IDF and the SLA, because he was suspected of links to the Lebanese resistance against the IDF operations in the area. It is alleged that he was never charged with an offence and that he was subjected to torture after arrest. He was held at Al-Khiam detention centre;

(k) Mr. Nehme Dakdout, a Lebanese born in 1957, was allgedly arrested in 1993 and was detained at Al-Khiam detention centre; he allegedly was arrested without a warrant by members of the SLA and the IDF. The reasons for his arrest are not known. He is said to have been subjected to torture after his arrest;

(l) Ms. Najwa Simhat, a Lebanese born in March 1962, was arrested on 29 September 1999 and was detained at Al-Khiam; she is said to have been arrested without a warrant by members of the IDF and the SLA. The reasons for her arrest are not known. The source indicates that she was arrested together with her husband and that she was subjected to torture in spite of her pregnancy;

(m) Mr. Ghandy Ayoub, a Lebanese born in February 1968, was allegedly arrested on 17 July 1997 and was detained at Al-Khiam detention centre; he is said to have been arrested without a warrant by members of the SLA and the IDF. The reasons for his arrest are not specified, but the source claims that he was not charged and that he has been subjected to torture;

(n) Mr. Rabah Abou Faour, a Lebanese born in April 1982, was allegedly arrested on 2 March 1998 at Zoumariah while visiting relatives, and was said to be detained at Al-Khiam detention centre. He apparently was arrested without a warrant by members of the IDF and subsequently subjected to torture;

(o) Ms. Cosette Ibrahim, a Lebanese citizen born in May 1975 and a journalist, was arrested on 2 September 1999 at Rmeish in southern Lebanon at the home of her parents. She was initially said to be detained at Al-Khiam detention centre. A previous urgent appeal was sent on her behalf by the Working Group on 22 September 1999. She reportedly was arrested without a warrant by members of the SLA and the IDF. She reportedly is accused of having written critical reports about the Israeli and SLA practices in the occupied zone of southern Lebanon.

5. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances relating to the cases in question for the following reasons:

(a) The facts and allegations contained in the communication have not been denied by the Government;

(b) The Working Group has already given its views on the arbitrary nature of the deprivation of liberty of persons held in detention at Al-Khiam prison (e.g. Opinion No. 9/1998, paragraphs 11, 12, 13 and 14, case of Suha Bechara);

(c) In its legal opinion of December 1999 entitled "Handling of communications concerning detention at the Al-Khiam prison (southern Lebanon)", the Working Group clarified the legal aspects of the status of the Al-Khiam prison.

6. The Working Group finds that all of the 15 persons to whom the present communication relates:

(a) Were arrested without warrants;

(b) Were subjected to administrative detention at Al-Khiam prison without being charged or at any time during their detention being heard by a judicial authority or any other competent authority;

(c) Have been subjected de facto to measures of deprivation of liberty of indeterminate duration.

7. The Working Group therefore considers that the total absence of guarantees constitutes a violation of their right to a fair trial, which is protected by articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, of such gravity that it confers on the deprivation of liberty of the above-mentioned persons an arbitrary character.

8. In view of the gravity of this violation, the Working Group has felt obliged to apply paragraph 17 (a) of its working methods and to render an opinion on the substance of the cases even though the persons concerned have been released following the withdrawal of the IDF from southern Lebanon.

9. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Rabah Abou Faour, De Gaulle Abou-Tas, Ali Alsaghir, Shamlakan Assaf, Hussein Atami, Samira Atteh, Ghandy Ayoub, Metme Dakdout, Cosette Ibrahim, Abbas Khanafir, Sulaiman Ramadan, Ahamed Samhat, Hosein Samhat, Ghassan Seied and Najwa Simhat is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

Adopted on 13 September 2000

OPINION No. 17/2000 (ISRAEL)

Communication addressed to the Government on 19 April 2000

Concerning Riad Kalakish, Samir Kassem, Taysser Shaaban, Ali Ahmad Srour, all of whom were released following the withdrawal of the Israeli Defence Forces (IDF) from southern Lebanon

The State is a Party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2 The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. According to the source:

(a) Ali Ahmad Srour, a Lebanese citizen born in 1975, was arrested on 24 December 1999 at Aita Sheib in southern Lebanon by members of Israeli intelligence and the Southern Lebanon Army (SLA), allegedly for refusing to cooperate with Israeli forces. He was transferred to Al-Khiam, where he was held without charges. It is alleged that he has been subjected to torture;

(b) Tayssir Shaaban, a Lebanese citizen born in 1958, was arrested on 1 October 1986 at Beityahoum in southern Lebanon by members of Israeli intelligence and the SLA, apparently because he was suspected of being linked to the Lebanese resistance to the Israeli presence. He was transferred to Al-Khiam, where he was held without any valid charges. It is alleged that he has been subjected to torture and that his state of health is deteriorating;

(c) Riad Kalakish, a Lebanese citizen born in 1967 and resident of Dibbin, was arrested on 1 February 1986 by members of Israeli intelligence and the SLA, apparently on suspicion of being linked to the Lebanese resistance. He was transferred to Al-Khiam, where he was held without any valid charges. It is alleged that he was subjected to torture and that his state of health is critical;

(d) Samir Kassem, a Lebanese citizen born in 1968, was arrested on 1 April 1988 at Yuhmor in southern Lebanon by members of Israeli intelligence and the SLA, reportedly because he refused to cooperate with the Israeli forces. He was transferred to Al-Khiam, where he was held without any valid charges. It is alleged that Mr. Kassem was subjected to torture, and that his eyesight is deteriorating.

5. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances relating to the cases in question for the following reasons:

(a) The facts and allegations contained in the communication have not been denied by the Government;

(b) The Working Group has already given its views on the arbitrary nature of the deprivation of liberty of persons held in detention at Al-Khiam (Opinion No. 9/1998, paragraphs 11, 12, 13 and 14, case of Suha Bechara);

(c) In its legal opinion of December 1999 entitled "Handling of communications concerning detention at the Al-Khiam Prison (southern Lebanon)", the Working Group clarified the legal aspects of the status of the Al-Khiam Prison.

6. The Working Group finds that all of the four persons to whom the communication addressed to the Group refers:

(a) Were subjected to administrative detention at Al-Khiam Prison without charge and without at any time during their detention being heard by a judicial authority or any other competent authority;

(b) Have been subjected de facto to measures of deprivation of liberty of indeterminate duration.

7. The Working Group therefore considers that the total absence of procedural guarantees constitutes a violation of the right of the above persons to a fair trial, which is protected by articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, of such gravity that it confers on the deprivation of liberty of the above-mentioned persons an arbitrary character.

8. In view of the gravity of this violation, the Working Group has felt obliged to apply paragraph 17 (a) of its working methods and to render an opinion on the substance of the cases, even though the persons concerned have been released.

9. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Riad Kalakish, Samir Kassem, Tayssir Shaaban and Ali Ahmad Srour is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

Adopted on 13 September 2000

OPINION No. 18/2000 (ISRAEL)

Communication addressed to the Government on 24 February 2000

Concerning Ahmed Amar

The State is a Party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Ahmed Amar, a Lebanese citizen, was allegedly arrested on 1 September 1986; the source contends that he was arrested without a warrant by members of the Israeli Defence Forces. He is said to have been sentenced to four years' imprisonment after a trial in which he had no legal representation. His sentence should have expired in 1991, but he continues to be held. He was initially held at Al-Khiam detention centre before being transferred to Bi'ir Sabee/Shata prison and subsequently to Askalan prison.

6. In the light of the above information, the Working Group concludes:

(a) That Ahmed Amar was arrested without a warrant;

(b) That he was detained in southern Lebanon at the Al-Khiam detention centre in conditions identical to those declared arbitrary by the Working Group in its Opinion No. 16/2000 concerning Rabah Abou Faour and other persons;

(c) That after having been sentenced to four years' imprisonment at the end of a trial in which he had no legal assistance, he continues to be held in detention even though his sentence has expired.

7. The Working Group therefore considers that the measure of deprivation of liberty taken against Ahmed Amar is in contravention of the provisions of article 9 of the Universal Declaration of Human Rights and of article 9 of the International Covenant on Civil and Political Rights, according to which no one may be subject to arbitrary detention. The Working Group finds that continued detention to be arbitrary inasmuch as there is no legal basis whatsoever for the continued detention of Ahmed Amar after his sentence has expired.

8. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Ahmed Amar is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

9. The Working Group accordingly requests the Government to release Ahmed Amar with immediate effect, as he has served his sentence.

Adopted on 13 September 2000

OPINION No. 19/2000 (CHINA)

Communication addressed to the Government on 19 October 1999

Concerning Phuntsok Legmon and Namdrol

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. In accordance with the information received, two young Tibetan monks, Phuntsok Legmon, aged 16 years, and Namdrol, aged 21 years, were arrested in Lhasa on 10 March 1999. Both are monks at Taklung monastery in Toelung county, near Lhasa. The date of their arrest coincided with the fortieth anniversary of the 1959 uprising in Tibet and police

security around this time is said to have been tight, particularly in Lhasa. Between 14.00 and 15.00 hours on 10 March 1999, Phuntsok Legmon and Namdrol reportedly entered the eastern side of the Barkhor, the road around Lhasa's main temple (the Jokhang). According to the source, they initially were carrying the Tibetan flag. Subsequently, they reportedly raised their fists into the air and began to shout political slogans. Their protest reportedly was brief: within minutes, Phuntsok Legmon was reportedly detained by five police officers from the Barkhor police station; Namdrol sought to escape but was caught and taken to another police station. It was reported that the two monks were beaten with batons during their arrest. They were then transferred to Gutsa detention centre.

6. On 9 July 1999, the Lhasa Intermediate People's Court sentenced Namdrol to three and Phuntsok Legmon to four years' imprisonment. The court found them guilty of "plotting or acting to split the country or to undermine national unity", and for "shouting slogans". In addition, Phuntsok Legmon was sentenced to two years' deprivation of political rights; Namdrol was deprived of his political rights for one year. Since the end of their trial, they have reportedly been detained at Drapchi Prison.

7. According to the source, the activities for which the two monks were sentenced clearly did not represent a genuine threat to national security.

8. In the light of the allegations, which have not been denied by the Government although it was given the opportunity to do so, the Working Group finds that the arrest, detention and sentencing of Phuntsok Legmon and Namdrol were based solely on the ground that they had publicly expressed their opinions by, among other things, waving the Tibetan flag, proclaiming political slogans and raising their fists for a few minutes, on the day of the fortieth anniversary of the Tibetan uprising, before being arrested by the police. Thus, they were only exercising the right, guaranteed by article 19 of the Universal Declaration of Human Rights, relating to freedom of opinion and expression, including the right of everyone to hold opinions without interference and the right to impart ideas through any media.

9. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Phuntsok Legmon and Namdrol is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

10. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to complete as soon as possible the process of ratification of the International Covenant on Civil and Political Rights.

Adopted on 14 September 2000

OPINION No. 20/2000 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 18 April 2000

Concerning Naji Azziz Harb

The State is a Party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

5. Naji Azziz Harb, a Lebanese citizen born in 1967 and a former officer in the Lebanese army, was arrested on 20 July 1990 in Beirut, reportedly by members of the Syrian intelligence services who did not produce a warrant for his arrest. According to the source, Mr. Harb was immediately transferred to Syria after the arrest. It is reported that the order for Mr. Harb's arrest emanated from the president of the military tribunal of the Second Syrian Army, General Bahjat Barakat Ismail. Mr. Harb was accused of involvement in the killing of

two Syrian soldiers in Beirut in 1988 and of terrorist acts, after having deserted from the regular Lebanese armed forces and joined the group of General Aoun. The charges against him were said to be based on articles 534 A, 305 A and 204 A of the Syrian General Code (referred to as Code général syrien by the source). It is reported that Mr. Harb was tried before a Syrian military tribunal in Syria although the Syrian judiciary never transmitted an extradition request to the Lebanese authorities.

6. In October 1991, Mr. Harb was found guilty as charged and sentenced to a life term of forced labour. He is currently serving this sentence at Saydnaya prison in Syria. It is alleged that the trial of Mr. Harb did not meet international standards for a fair trial: he was tried before a military tribunal composed of military officers subject to the orders of the military hierarchy and he reportedly was denied of his right to legal representation, as the trial transcript of the case makes no reference to the presence or assistance of a lawyer. Moreover, the conviction of Mr. Harb is said to be based entirely on circumstantial evidence and on confessions that are said to have been obtained under duress. Finally, the life sentence pronounced against Mr. Harb reportedly cannot be appealed to a higher court.

7. The family of Mr. Harb reportedly was not informed of the judgement. It was not until 1998 that his mother, after several written démarches with the Lebanese authorities (who had theretofore denied the existence of Lebanese prisoners in Syrian detention facilities) and the military tribunal of Beirut, was able to obtain detailed information about the reasons for her son's detention, as well as a certified copy of the judgement of the military tribunal. She is currently entitled to visit her son once a month at the prison of Saydnaya.

8. In its reply, dated 26 May 2000, the Government confirmed to the Working Group that Mr. Harb was arrested on 20 July 1990. Without specifying the place of arrest or the nationality of Mr. Harb, it states that he had been "found to be a member of an organization hostile to our country and to have formed part of an armed group which attacked a checkpoint manned by our forces operating in Lebanon, at which he killed two Syrian soldiers". The Government states that "he was referred to the competent court and sentenced to life imprisonment".

9. The Working Group has without success requested the Government to provide it with detailed information on the legal basis for the detention of Mr. Harb. In the absence of information, particularly concerning his trial and the observance of his right to a fair trial, which was impugned by the source, which the Government did not deny although given an opportunity to do so, the Working Group considers itself in a position to render an opinion on the case on the basis of the information provided by the source.

10. The following elements of violation of the right to a fair trial have been submitted. Firstly, the accused was denied his right to legal representation during the trial. Secondly, his conviction was based solely on circumstantial evidence and on his own confessions, said to have been obtained under duress. Thirdly, he did not have the right of appeal against his sentence. Thus, articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (3) and (5) of the International Covenant on Civil and Political Rights have been violated. The gravity of that violation of the right to a fair trial is such as to confer on the detention of Mr. Harb an arbitrary character.

11. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Naji Azziz Harb is arbitrary, as being in contravention of articles 10 and 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

12. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 14 September 2000

OPINION No. 21/2000 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 14 April 2000

Concerning Fateh Jamus and Issam Dimashqi

The State is a Party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified by resolution 1999/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

5. According to the source, Fateh Jamus, born in 1948 and a mechanical engineer, was arrested in February 1982 for his alleged involvement in activities of the banned political opposition group Party for Communist Action (PCA). Issam Dimashqi, born in 1950 and a civil engineer, was arrested in March 1982 for the same reason. After more than 10 years in

detention, both men were tried in the Supreme State Security Court (SSSC) on 28 June 1992, on charges of "forming or belonging to an organization intended to change the social and economic structure of the State and society's fundamental conditions" and "opposing the objectives of the Revolution". Mr. Jamus and Mr. Dimashqi were both sentenced to 15 years in prison, a sentence which, according to Syrian law, was to apply from the date of arrest and not the date of sentencing. Thus, according to the source, both men should have been released in February and March 1997, respectively, but at the time of submission of the communication, they remained incarcerated at Sednaya Prison, more than three years beyond the expiration of their prison sentences.

6. The source notes that the SSSC was created by Legislative Decree 47 of 28 March 1968, for the purpose of dealing with all political and State security cases. It is submitted that Mr. Jamus and Mr. Dimashqi did not receive a fair trial in the SSSC, as the procedures followed in the SSSC are said to be incompatible with internationally recognized standards for fair trial. Thus, it is argued that for the vast majority of trials before the SSSC in the course of 1992 (and up to the present), lawyers were not granted access to their clients prior to the trial, proceedings were initiated before legal representatives had had an opportunity to study their clients' case files, and the court frequently denied lawyers the opportunity to engage in oral arguments on behalf of their clients. Moreover, lawyers arguing cases before the SSSC were said to require written permission from the President of the SSSC in order to be allowed to see their clients in detention, permission which was often withheld. Moreover, those sentenced by the SSSC in 1992 reportedly had no right to appeal their sentences.

7. According to the source, Mr. Jamus and Mr. Dimashqi were found guilty of "opposition to the socialist system of the State and Arab unity" and "terrorism" on 11 January 1994. They were convicted of terrorism although they were reportedly not charged with committing or planning any act of violence or terrorism and, according to the source, no evidence was presented in court to suggest that they had ever used or advocated violence.

8. The source recalls that the trial of Mr. Jamus and Mr. Dimashqi took place more than 10 years after their arrest which, pursuant to article 437 (1) of the Syrian Code of Criminal Procedure, infringes the 10-year statutory limit for bringing a case against the defendant. It is further said to violate articles 9, paragraph 3, and 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights.

9. According to the source, under the regulations of the SSSC, Mr. James and Mr. Dimashqi had no right to challenge the legality of their continued detention beyond the expiration of their respective sentences in February and March 1997. This is said to constitute a violation of article 9, paragraph 4, of the International Covenant on Civil and Political Rights.

10. In its reply of 22 May 2000, the Government informs the Working Group that Mr. Jamus and Mr. Dimashqi have been unconditionally released. This was confirmed by the source, which states that Mr. Dimashqi was released on 22 or 23 April 2000 and Mr. Jamus on 4 May 2000, after having refused the same day to sign an undertaking to renounce political activity.

11. The Working Group welcomes the release of the two men and the prompt reply of the Government. It notes, however, that the Government only provided information on their release and did not respond to the Group's request for information and explanations regarding the situation of the detainees, including the legal basis for their detention from 1982 to 2000. The Government has not reacted to the source's allegations, which were communicated to it by the Working Group.

12. Given that the Government had an opportunity to comment on the allegations but did not do so, the Working Group has decided to render its opinion based on the information supplied by the source. The Working Group believes that the facts as submitted enable it to render an opinion.

13. The Working Group renders its opinion on the question of whether the deprivation of liberty in the cases referred to was arbitrary, notwithstanding the release of the above-mentioned persons, in accordance with paragraph 17 (a) of its methods of work.

14. The proceedings took place before the SSSC and the two men were tried for political or State security offences. The Court was established by Legislative Decree No. 47 of 28 March 1968. The Working Group is seriously concerned at what it views as the Court's non-compliance with international standards on the right to a fair trial. For example, lawyers are not granted access to their clients prior to the trial, proceedings are initiated before legal representatives have an opportunity to study the case file, and lawyers are frequently denied their right to speak on behalf of their clients. Lawyers require written permission from the Court's President before they can see their clients in prison, permission that is often withheld. Moreover, at least in 1992, those sentenced by the SSSC had no right to appeal their sentences.

15. The Working Group considers that the deprivation of liberty of Mr. Jamus and Mr. Dimashqi between February/March 1982 and the start of their trial in June 1992, that is to say a period of more than 10 years without trial, constitutes a violation of international norms guaranteeing the right to a fair trial. Other violations of the right to a fair trial have been noted: the absence of defence counsel (International Covenant on Civil and Political Rights, art. 14, para. 3 (b) and (d)), and the absence of the right to have the conviction and sentence reviewed by a higher tribunal (Covenant, art. 14, para. 5). In accordance with articles 9, 10 and 11, paragraph 1, of the Universal Declaration of Human Rights and articles 9, paragraph 3, and 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights, these violations are of such gravity as to render the detention of Mr. Jamus and Mr. Dimashqi arbitrary.

16. The continued detention of Mr. Jamus and Mr. Dimashqi after their sentences had been completed, on 12 February 1997 (Mr. Jamus) and in March 1997 (Mr. Dimashqi) until their release on 22 (or 23) April 2000 (Mr. Dimashqi) and 4 May 2000 (Mr. Jamus), i.e. for more than three years, manifestly cannot be justified on any legal basis.

17. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Fateh Jamus and Issam Dimashqi is arbitrary since it manifestly cannot be justified on any legal basis and therefore falls into category I of the categories applicable to the consideration of cases referred to the Working Group, for the period between the completion of their sentence in February 1997 and March 1997 and the release of Mr. Jamus on 4 May 2000 and of Mr. Dimashqi on 22 or 23 April 2000.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 14 September 2000

OPINION No. 22/2000 (TURKEY)

Communication addressed to the Government on 16 July 1999

Concerning Hüda Kaya

The State is not a Party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified by resolution 1999/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

5. Hüda Kaya was arrested during a demonstration in October 1998, together with a group involving a total of 75 demonstrators. All had taken part in a demonstration in the city of Malatya over the banning of Muslim female students from Turkish universities who adhered to the Islamic dress code. The case has since become known as the "Malatya 75".

6. Originally, according to the source, the participants in the case, including Hüda Kaya, were charged with a variety of offences under the Turkish Penal Code; some apparently were detained without charges. At the end of June 1999, they were rearraigned and charged, under section 146 of the Turkish Penal Code, for attempting to overthrow the constitutional order of Turkey by virtue of their "hand in hand" demonstration in October 1998. It is noted that the participants in the demonstration acted peacefully throughout.

7. The source notes that in the case of Hüda Kaya, the prosecutor of the State Security Court asked for the death penalty to be imposed if the accused was found guilty.

8. The trial of Hüda Kaya and her co-accused began in Malatya on 22 June 1999. Military personnel and armed security personnel were prominently in evidence in the courtroom. The press was allowed to attend, but certain observers from human rights groups, including the Turkish human rights group Mazlumder, allegedly were refused admission. In spite of the tight security, many of the defendants were seated in the public gallery, thereby indicating that they were not in themselves perceived to be a threat to the public. During the initial stage of the proceedings, it became clear that 40 of the 75 accused (not, apparently, Hüda Kaya) had been awarded bail, whilst the other 35 were remanded in custody. The charges against five of the accused were dropped at the end of the day.

9. During the court session, the trial judge inquired whether any of the defendants had been subjected to ill-treatment whilst in police custody. Several defendants replied in the affirmative. According to the source, there was no full disclosure of all documents, photographs and other documentary evidence used by the prosecution against the defendants. Several of the charges against the accused appear to have been based on their being in possession of certain books or other reading materials. The judge allegedly questioned some of the defendants as to why they had been in possession of books on the Kurdish issue in the Kurdish language. Hüda Kaya herself was asked whether she had written a newspaper article stating that the "system" had to be changed. She replied that she had written the article while she was in custody.

10. Several of the lawyers for the defendants argued that whatever crimes their clients were charged with, they did not merit the death penalty. It was further argued that the imposition of capital punishment on any of the defendants would be contrary to the European Convention on Human Rights, to which Turkey is a party.

11. In the evening of 22 June 1999, the proceedings were adjourned to the following month.

12. In its reply to the Group, the Government observes that:

(a) It has been established through a security check that Ms. Hüda Kaya, one of the participants in the demonstration against the law prohibiting female students from wearing headscarves to attend secondary education institutions, held in Malatya on 9 October 1998, was in possession of a text spreading hatred and discrimination among the public. During her interrogation, she confessed that the text was written and distributed by herself at the demonstration;

(b) Ms. Kaya, together with three persons caught at the demonstration, was transferred to the authorities on 12 October 1998. While the other three persons were released by the Office of the Chief Prosecutor, Ms. Kaya was arrested and imprisoned at the Malatya prison. She was later released;

(c) It has been established through the medical reports, issued respectively on 9, 10 and 12 October 1998, that she was not subjected to ill-treatment or torture during this period;

(d) On 7 May 1999, a group of 4,500-5,000 people, following Friday prayers, demonstrated against the measures to ensure freedom of thought and religion taken by the administration of Inönü University in Malatya. Ms. Kaya was noticed in the video recordings made by the police. On that basis, she was arrested on 19 May 1999 and imprisoned at the Malatya prison. The medical report issued on the day of her arrest confirmed that she had not been subjected to ill-treatment or torture;

(e) Ms. Kaya did not lodge any complaint with the Office of the Chief Prosecutor pertaining to ill-treatment or torture;

(f) Following the demonstration at the Inönü University, and upon the indictment by the Office of the Chief Prosecutor of the State Security Court of Malatya, a lawsuit was lodged against the demonstrators on the ground of "participating in the offence of attempting to overthrow the constitutional order". The legal process against the demonstrators is in full compliance with the principles of a state of law. The fact that the prosecutor requested capital punishment in his indictment does not mean that their sentences will be in that direction. In fact, at the first court session of 22 June 1999, the charges against 5 of the accused were dropped, and at the second session on 11 August 1999, 14 of them were released. The last session was held on 9 September 1999; however some cases, including Ms. Kaya's, are still pending.

13. The Government's reply was forwarded to the source on 20 April 2000 for comments. In its comments, the source points out that what the Government calls a demonstration against "the measures to ensure freedom of thought and religion taken by the administration of Inönü University in Malatya" was in fact a demonstration to protest against the banning from the university of female students wearing Muslim headscarves.

14. The Working Group notes that according to the source there was only one demonstration - in October 1998 - on the purpose of which the source disagrees with the Government. In the Government's opinion, on the other hand, there were two demonstrations, one in October 1998 and another on 7 May 1999, to protest against the measures taken to ensure freedom of thought and religion at Inönü University. However, the Government and the source both agree that Hüda Kaya, after being released once, was rearrested on 19 May 1999 and that the charges against her and the other demonstrators had been changed to "attempting to overthrow the constitutional order" under section 146 of the Turkish Penal Code. Nor is it contested that Hüda Kaya's trial opened on 22 June 1999 and that the case is still pending. Lastly, the Government does not state anywhere in its reply that violence was used during the demonstration.

15. With regard to the death penalty referred to by the source, the Working Group recalls that, as the Government points out, it is merely a sentence requested by the prosecutor which the judges might not accept.

16. It is the view of the Working Group that the basis for Hüda Kaya's detention and the charges against her lies in fact only in her participation in the October 1998 demonstration, and possibly a demonstration on 7 May 1999, even though, in so doing, she was only exercising peacefully her right to freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights.

17. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Hüda Kaya is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 14 September 2000

OPINION No. 23/2000 (HAITI)

Communication addressed to the Government on 19 November1999

Concerning Ernest Bennett, Edouard Soster Boyer, Antony C.J. Charles, Delzince Marcel, Evans François, Ulton Gedeon, Valot Hosse, Josue Joseph, Teluce Jean Lubin, Henriquez Pierre, Bossicot Pierre-Louis, Anovil Sainvil, Bon Jacob Sainvil, Jean Enel Samedy, Jean-Michel Thourvenaut and Raynold Albert Valéry

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50 and reconfirmed it in resolution 2000/36. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regrets that the Government did not reply within the 90-day time limit.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the Government's cooperation. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to information from the source, the individuals mentioned below have been the victims of arbitrary detention.

6. In July 1998, Mr. Ernest Bennett, aged 73, was arrested at his home and taken to the Petionville prison. The police allegedly did not produce an arrest warrant, and Mr. Bennett was not apprehended in flagrante delicto. No formal charges were brought against Mr. Bennett, the ex-father-in-law of Mr. Jean-Claude Duvalier, while the latter was President of the Republic. According to information in the media, Mr. Bennett was allegedly arrested for embezzling government funds while Mr. Duvalier was President. According to the Haitian legislation in force, Mr. Bennett should not have been arrested and detained, as the law stipulates that individuals aged 65 or over cannot be detained, with the exception of cases involving violent crimes.

7. Two months after his arrest, Mr. Bennett was brought before an examining magistrate for the first time. On that occasion, the judge found no reason to continue detaining him and ordered him released. Two months later, Mr. Bennett appeared before the same judge, who informed him that he was waiting for government commissioner Jean-Auguste Brutus to sign his release order so as to release him.

8. Mr. Bennett lodged appeals for his release at all levels of the Haitian Government, including the Citizen's Protection Bureau (Mr. Louis Roy). Mr. Bennett remains in detention to date, and is said to be in a precarious state of health; Commissioner Brutus continues to defy the release order.

9. According to the source, the continued detention of Mr. Bennett is a violation of articles 24, paragraph 3 and 26, paragraph 2 of the Haitian Constitution, article 503 of the Code of Civil Procedure (a prosecutor cannot judge in the place of the judiciary) and article 7 of the presidential Decree-Law of 26 July 1979, which stipulates that an examining magistrate must determine within 90 days whether an accused person is to be charged or released. The detention is also contrary to articles 9 and 14, paragraph 2, of the International Covenant on Civil and Political Rights, to which Haiti is a party, and according to article 276, paragraph 2, of the 1987 Constitution, the international treaties ratified by Haiti automatically become part of domestic legislation.

10. Edouard Soster Boyer, aged 25, was arrested on 13 October 1997 at his home in Port-au-Prince. It is alleged that no arrest warrant was produced and that he was not informed of the charges against him. According to media sources, Mr. Boyer was arrested because he was identified as a "co-conspirator" by an imprisoned member of a gang, a certain "Harold", who identified Mr. Boyer through his car as being involved in the crimes with which he is charged.

11. Mr. Boyer appeared before an examining magistrate only once, approximately five months after his arrest. On that occasion, the judge dealt only with the question of the car's ownership, after which Mr. Boyer was returned to the prison, where he remains in detention.

12. According to the source, Mr. Boyer's detention is arbitrary as being contrary to articles 24, paragraph 3, and 26, paragraph 2, of the Constitution, and to article 7 of the presidential Decree-Law of 26 July 1979. For the rest of the arguments, see the case of Mr. Bennett above.

13. Antony C.J. Charles, aged 49, was arrested at his shop in Port-au-Prince one morning in October 1997. Allegedly no arrest warrant was produced, and he was not surprised in flagrante delicto. Since his arrest, Mr. Charles has been brought before an examining magistrate only once, in December 1998. On that occasion, his lawyer was not able to attend the hearing, and Mr. Charles returned to prison. Commissioner J.-A. Brutus allegedly failed to carry out two judicial decisions ordering Mr. Charles' release.

14. Mr. Charles is accused of forging his birth certificate in order to claim an inheritance from his father, Clémard Joseph Charles. Mr. Charles' widow claims that Antony Charles is not her late husband's legitimate child. In 1996 Mr. Charles produced a copy of his birth certificate, the authenticity of which has since been confirmed through the Haitian National Archives.

15. On 17 March 1998, Mr. Charles' lawyer, Mr. Févry, pleaded Mr. Charles' case before the Supreme Court of Haiti. One of the three judges openly accused the others of accepting money (US$ 70,000) to keep Mr. Charles in detention. Mr. Févry transmitted similar arguments to the President of the Repbulic, Mr. Préval. Two days later, Mr. Févry himself was arrested.

16. According to the source, Mr. Charles' detention is contrary to article 24, paragraph 3, and article 26, paragraph 2, of the Haitian Constitution, and to article 7 of the presidential Decree-Law of 26 July 1979. For the rest of the arguments, see the case of Mr. Bennett above.

17. Delzince Marcel, a Haitian national approximately 29 years of age, was arrested on 27 July 1998 in Port-au-Prince, without an arrest warrant. He has not been brought before an examining magistrate. Mr. Marcel was a member of the Haitian armed forces until his retirement, which coincided with the dismantling of the army in 1995. On 27 July 1998 he had gone to the Ministry of Finance to collect a pension cheque, along with 600 other former members of the military, when a specialized police unit, the Compagnie d'Intervention et de Maintien de l'Ordre (CIMO), arrived to disperse the crowd. Mr. Marcel was among the people arrested. Since his arrest, Mr. Marcel has allegedly never been informed of the charges against him. His family heard the news of his arrest on the radio. According to the media, Mr. Marcel is charged with "plotting against the State".

18. According to the source, Mr. Marcel's continued detention is arbitrary as being contrary to article 24, paragraph 3, and article 26, paragraph 2, of the Haitian Constitution, and to article 7 of the presidential Decree-Law of 26 July 1979. For the rest of the arguments, see the case of Mr. Bennett above.

19. Evans François, a 46-year-old Haitian, was arrested at his home in Port-au-Prince on 18 April 1996 by members of the National Intelligence Service. They did not have an arrest warrant, but the leader of the group, Patrick Moise, indicated that his men were acting on orders from the "Western Delegation", representing the Office of the President in Delmas.

20. In May 1996, Mr. François' wife contacted Commissioner Brutus to ask about her husband's detention. She was told that her husband was being detained for his own protection, as he had allegedly been arrested by mercenaries. Mr. Brutus repeated the same argument in June 1996. On 7 March, the Clerk of the Court certified that there was no file on Mr. François. On 7 June 1997, Mr. François' case was finally brought before a competent examining

magistrate by his lawyer, Mr. Delienne. Since Commissioner Brutus did not attend the hearing, as he was required to do by law, the judge ordered Mr. François released. Mr. Brutus has not carried out this order to date.

21. According to the source, the continued detention of Mr. François is arbitrary for the reasons cited in the above-mentioned cases.

22. Ulton Gedeon, a 37-year-old Haitian, was a corporal in the Haitian army from 1981 through 1994. On 27 July 1998, he was arrested near the Ministry of Finance, having joined a crowd which was attempting to collect pension cheques, by members of the CIMO. On 29 July 1998, Mr. Gedeon was transferred to the central prison. His family learned of his arrest on the radio; he is allegedly charged with "plotting against the State".

23. Mr. Gedeon's wife and sisters questioned Commissioner Brutus on several occasions. In December 1998, they were told that the case would soon be brought before an examining magistrate, and that the family should hire a lawyer. As Mr. Gedeon's relatives were unable to afford a lawyer, judicial staff told them that the court would not hear the case until Mr. Gedeon was represented.

24. To date, Mr. Gedeon has not been heard by an examining magistrate and has not been told precisely what charges have been brought against him. According to the source, Mr. Gedeon's detention is arbitrary for the reasons cited in the above-mentioned cases.

25. Valot Hosse, a 34-year-old Haitian, was arrested on 28 July 1998 under conditions similar to those of Mr. Gedeon. Mr. Hosse was not informed of the charges against him, and his wife learned of his arrest on the radio. Mr. Hosse has not been brought before an examining magistrate since his arrest.

26. Mrs. Hosse tried repeatedly to obtain clarifications concerning her husband's fate. It was allegedly not until three months after her husband's arrest that she was told by Commissioner Brutus that Mr. Hosse and other individuals arrested with him were not guilty, but that President Préval would not authorize their release. According to the source, Mr. Hosse's detention is arbitrary for the reasons cited in the above-mentioned cases.

27. Josue Joseph, a 30-year-old Haitian, was arrested on 28 July 1998 in the same circumstances and context as Mr. Gedeon and Mr. Hosse (see above). According to the source, no formal charges have been preferred against him since his arrest, and he has not been brought before an examining magistrate, which confers an arbitrary character on his detention.

28. Teluce Jean Lubin, a 33-year-old Haitian, was arrested on 3 October 1995 at his home in Port-au-Prince. Mr. Lubin had called the police because he felt threatened by the members of a gang which had gathered outside his house. When the police arrived, the members of the gang had disappeared, and Mr. Lubin himself was arrested.

29. Since October 1995, Mr. Lubin has not been informed of the charges against him, and has not been brought before an examining magistrate. The source states that Mr. Lubin's continued detention is arbitrary for the reasons cited in the above-mentioned cases.

30. Henriquez Pierre, a 55-year-old Haitian, was arrested on 28 July 1998 in the same circumstances and context as Mr. Gedeon, Mr. Hosse and Mr. Joseph (see above). It is alleged that, since his arrest, he has not seen an examining magistrate and has not been formally notified of the charges against him, which, according to the source, confers an arbitrary character on his detention.

31. Bossicot Pierre-Louis, a 36-year-old Haitian, was arrested on 4 July 1997 in Port-au-Prince as he was preparing to board a bus. Mr. Pierre-Louis considers himself to have initially been arrested for participating in a "plot against the Government". His mother was allegedly informed by Commissioner Brutus that he had never received orders to arrest Mr. Pierre-Louis, and that he was well aware of the fact that Mr. Pierre-Louis was not guilty.

32. Since his arrest over two years ago, Mr. Pierre-Louis has not been informed of the charges against him and has not been brought before an examining magistrate, which, according to the source, confers an arbitrary character on his detention.

33. Anovil Sainvil, a 32-year-old Haitian, was arrested on 20 July 1998; it is not known where. According to the source, he is currently incarcerated in the "political" section of the central prison in Port-au-Prince. He has not been brought before an examining magistrate, and has not been formally notified of the charges against him, which, according to the source, confers an arbitrary character on his detention.

34. Bon Jacob Sainvil, a 30-year-old Haitian, was arrested on 8 September 1998 in Petionville. As in his brother's case, the reasons for his detention are still unknown, and he is allegedly being held in the "political" section of the central prison. As in his brother's case, no arrest warrant was produced, no formal charges were brought against him and he has not been brought before an examining magistrate.

35. Jean Enel Samedy, a 32-year-old Haitian, was arrested in August 1996 on the premises of the Hubert-Deronsray political party, for which he was working at the time. The police did not produce a warrant when they arrested him. No formal charges have been preferred against him, and he has not been brought before an examining magistrate for a period of more than three years. Contacts made by his wife with the Joint United Nations/OAS International Civilian Mission in Haiti (MICIVIH) have produced no results. According to the source, Mr. Samedy's continued detention, without charges and without trial, is of an arbitrary character.

36. Jean-Michel Thourvenaut, a 33-year-old Haitian, was allegedly arrested at his home in Gérard on 6 August 1996, also without an arrest warrant. According to Mr. Thourvenaut's father, his son was subjected to abuse and ill-treatment on arrest. He was not informed of the charges against him.

37. Eight months after his arrest, Mr. Thourvenaut appeared before Commissioner Brutus, who allegedly ordered him not to try to "take revenge" after his release. He was subsequently returned to the prison, and has not appeared before a prosecutor or examining magistrate since spring 1997. He has not been formally charged.

38. In 1998, Mr. Thourvenaut's father engaged the services of a lawyer to prepare his son's defence. The lawyer allegedly told Mr. Thourvenaut's father that his son's detention order had been issued by Mr. Jean-Bertrand Aristide, former President of the Republic, and was irreversible. According to the source, Mr. Thourvenaut's continued detention is of an arbitrary character.

39. Raynold Albert Valéry, a 37-year-old Haitian, was arrested on 9 September 1997, without an arrest warrant, and was taken to the national prison in Port-au-Prince. Mr. Valéry was accused of raping a girl living in his neighbourhood. The girl was examined by a doctor and a medical expert, who found no trace of sexual activity or sexual abuse. The girl's family had initially agreed to withdraw the complaint against Mr. Valéry in return for US$ 3,000, but eventually withdrew the complaint unconditionally.

40. One year after his arrest, Mr. Valéry was first brought before an examining magistrate, who ordered him to appear before a "correctional court" within 15 days. To date Mr. Valéry has not appeared before such a court. According to the source, his continued detention is of an arbitrary character.

41. The Working Group notes that the above-mentioned individuals were all arrested without mandates issued by a judicial authority, whereas they had not been apprehended in flagrante delicto.

42. The Working Group also notes that, some of those arrested were not brought before a judge for periods ranging from two months to three years. Some were in fact never brought before a judge, at least by the time when this communication was submitted to the Working Group, which means that they have remained ignorant of the charges against them, in violation of article 9, paragraph 2, and article 14, paragraph 3, of the International Covenant on Civil and Political Rights.

43. Even more serious, decisions have been taken to release some of the detainees, such as Ernest Bennett, Antony C. J. Charles and Evans François, which Commissioner Brutus - in apparently customary behaviour (see Working Group Opinion No. 24/1999 concerning Frantz Henry Jean Louis and Thomas Asabath) - has refused to execute in his capacity of Chief Prosecutor of Port-au-Prince, in violation of article 26, paragraph 2, of the 1987 Constitution, according to which, in the case of an arrest which he deems to be illegal, a judge must order the immediate release of the person arrested and the release must be executed immediately despite the existence of any appeal to a higher body or the Supreme Court.

44. Consequently, in the opinion of the Working Group, there has been a violation of the international norms relating to the right to a fair trial of such gravity as to confer an arbitrary character on the deprivation of liberty of the above-mentioned individuals (category III). Furthermore, concerning the detention of Ernest Bennett, Antony C.J. Charles and Evans François, who are still in custody despite a release order issued by an examining magistrate, the deprivation of liberty is also arbitrary because it manifestly cannot be justified on any legal basis (category I).

45. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to put an end to the impunity enjoyed by those responsible for the deliberately arbitrary detentions mentioned above (Commission on Human Rights resolutions 1999/34 and 2000/68).

Adopted on 14 September 2000

OPINION No. 24/2000 (LITHUANIA)

Communication addressed to the Government on 13 January 2000

Concerning Pedro Katunda Kambangu

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1999/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

5. In the context of the allegations made by the source and the response of the Government, the matter at issue is the legality of the alleged detention of Pedro Katunda Kambangu in the Foreigners Registration Centre of Pabrade beginning on 12 March 1998. The Government has informed the Working Group that Pedro Katunda Kambangu appealed to the Embassy of Angola in Moscow, and that an Angolan passport was issued to him. He then applied to the Embassy of Belarus in Lithuania and a visa for Belarus was issued to him. Thereafter, according to the

Government, Pedro Katunda Kambangu departed from the Republic of Lithuania on 21 January 2000. On this basis, the period during which Pedro Katunda Kambangu was allegedly "detained" at the Foreigners Registration Centre at Pabrade was from 12 March 1998 to 21 January 2000. It is the legality of such alleged detention that is in question.

6. Pedro Katunda Kambangu arrived legally in Lithuania on 2 March 1998 on a transit visa issued by the Embassy of Lithuania in France, which expired on 3 March 1998. On 4 March 1998 the police at Vilnius ordered him to leave Lithuania by 9 March 1998. It is alleged by the source that because of the theft of his handbag and passport on 8/9 March 1998, Mr. Katunda Kambangu could not leave by 9 March. When on 10 March 1998 he tried to leave Lithuania for Belarus, he was refused entry into Belarus by the border police. He was then arrested by the Lithuanian transport police and transferred to the Foreigners Registration Centre. The source states that he was accommodated at the Centre without the approval or decision of the Centre's Director. This has been denied by the Government.

7. On 22 June 1998, Mr. Katunda Kambangu requested asylum in Lithuania. On 12 August 1998, the Migration Department adopted a decision in terms of which, pending consideration of a grant of temporary asylum, he was allowed to continue to reside in the Foreigners Registration Centre.

8. On 6 October 1998 the Migration Department refused to grant temporary asylum to Mr. Katunda Kambangu. On 19 October 1998, the Department decided to expel him from Lithuania. Mr. Katunda Kambangu appealed to the Vilnius District Court, which declared both decisions of the Department unlawful.

9. On 14 June 1999, the Migration Department again refused to grant asylum to Mr. Katunda Kambangu, who then challenged his detention at the Pabrade Centre before the Higher Administrative Court, with no success. On 11 October 1999, the Court held that his imprisonment at the Centre was not contrary to article 20, Part 2, of the Lithuanian Constitution; that it was also not contrary to article 5 (1) and (4) of the European Convention on Human Rights; and that confinement at the Foreigners Registration Centre could not be considered a deprivation of liberty. Mr. Katunda Kambangu appealed, and the Court of Appeal of Lithuania upheld the decision of the Higher Administrative Court.

10. Meanwhile, on 9 December 1999, the Higher Administrative Court cancelled the decision of the Migration Department to refuse the applicant temporary asylum in Lithuania. The Court, however, did not set any new time limit for a new decision to be adopted by the Department.

11. Mr. Katunda Kambangu contends that confinement at the Foreigners Registration Centre at Pabrade, is in effect consistent with the regime of ordinary detention since the Centre is a closed area, fenced with barbed wire, and that:

(a) Asylum-seekers must comply with a 24-hour regime and working hours are subject to administrative control;

(b) Violations of the Centre's regulations lead to the imposition of disciplinary measures;

(c) Residents enjoy limited rights;

(d) Military guards are empowered to use special measures.

12. It is also alleged by the source that the duration of confinement of asylum-seekers to the Foreigners Registration Centre is regulated only by the Instruction of Investigation of Foreigners' Applications for granting refugee status in the Republic of Lithuania, as approved by Ministerial Order No. 391 of 1992, and the Regulations of Pabrade Centre, approved on 10 June 1999 by the Commissioner General of the Police Department. None of these documents is allegedly published in the official State Gazette though, under the Ministerial Instruction, the Migration Department must adopt a decision on asylum matters within two days from the time of registration of the foreigner's application. In practice, the time taken is more than 60 days.

13. It is also contended that the Law on the Legal Status of Foreigners stipulates that a foreigner is sent to the Foreigners Registration Centre only on the basis of a court decision (art. 45, Part 2). This law allegedly discriminates against asylum-seekers. Firstly, the law allegedly applies only to those foreigners who do not seek asylum. Secondly, it does not cover asylum-seekers who were detained before 1 July 1999. Thirdly, those already at Pabrade are never brought before a court. The source therefore contends that open-ended, prolonged detention of asylum-seekers is unreasonable. The source also contends that there is an absence of procedural principles based on which the court should adjudicate the issue of whether the foreigner should be detained at Pabrade or not. Such a decision is not subject to appeal. In the absence of a maximum time limit for detention of asylum-seekers, and in the absence of periodic reviews of continuing detention, the source contends that the detention of Mr. Katunda Kambangu for more than 22 months was arbitrary and falls short of the requirements set out in article 9 (1) of the International Covenant on Civil and Political Rights and article 5 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

14. The Government, on the other hand, contends that Mr. Katunda Kambangu's detention was justified. The police are entitled to detain a person violating the regime governing admittance to the territory of the Republic of Lithuania. At the time of his detention, Mr. Katunda Kambangu possessed no documents certifying his identity, thereby entitling the Lithuanian police to detain him. He was alleged to have violated the "Regulations of foreigners' arrival, stay in the Republic of Lithuania and transit through it". Regarding confinement at the Foreigners Registration Centre, the Government alleges that Mr. Katunda Kambangu presented himself and acquiesced in being placed there. Regarding the requirement of a court order before confining Mr. Katunda Kambangu, the Government notes that until 1 July 1999, no judicial decision was required for a foreigner's accommodation at the Centre. The Government also contends that an asylum-seeker may be transferred from the Foreigners Registration Centre to the Refugees Reception Centre when temporary asylum in Lithuania is granted to him. Since Mr. Katunda Kambangu never received asylum, he could not have been transferred from Pabrade. Besides, the court investigating Mr. Katunda Kambangu's refugee status commented that the "claimant misled the officers", gave contradictory and false information and did not always fully cooperate with the officers. The Government justifies his confinement in the absence of his being able to establish his identity.

15. The Government states that asylum-seekers who arrive legally in the Republic of Lithuania are not accommodated at Pabrade. It contends that the Migration Department has in several instances allowed persons who entered Lithuania illegally to reside in places of their own choosing if they are in possession of identity documents and possess sufficient means of subsistence in the country. Mr. Katunda Kambangu, according to the Government, was neither able to establish his identity nor to satisfy the authorities that he had enough money to support himself in the country. Other allegations made by the source relating to the manner of functioning of the court have also been denied by the Government.

16. Finally, the Government contends that the non-applicability of procedural guarantees relating to the deprivation of liberty would not automatically lead to the deprivation of liberty being arbitrary.

17. The Working Group has noted the allegations of the source and the exhaustive reply of the Government. Mr. Katunda Kambangu was confined to the Foreigners Registration Centre from 12 March 1998 to 21 January 2000, when he voluntarily departed from the Republic of Lithuania. During this period, Mr. Katunda Kambangu challenged the negative decisions of the Migration Department under the authority of the Ministry of the Interior on several occasions. He also filed appeals which were disposed of, on occasions in his favour. He also sought declarations from courts of law, contending that his detention was illegal and unreasonable, in violation of the Lithuanian Constitution and the European Convention on Human Rights.

18. Article 20 of the Lithuanian Constitution stipulates that personal freedom shall be inviolable. It further stipulates that no person shall be arbitrarily detained. Under the Constitution, a person cannot be deprived of his freedom except in accordance with procedures established by law. The Working Group must consider the application of article 20 to the facts and circumstances in which Mr. Katunda Kambangu came to be detained at the Foreigners Registration Centre. In the absence of documents establishing his identity, the authorities confined him in Pabrade. There is nothing to suggest that legal remedies were not available to him to vindicate his rights. Indeed, on occasions relief was granted to him by local courts which directed the authorities to consider his application for temporary asylum. There exist legal procedures which can be used by persons in a similar situation to Mr. Katunda Kambangu. It is difficult to hold that article 20 of the Lithuanian Constitution was contravened in the case of Mr. Katunda Kambangu's confinement at Pabrade.

19. The Law on the Legal Status of Foreigners, effective 1 July 1999, stipulates that it is not applicable to foreigners seeking political asylum in the Republic of Lithuania. Under article 45, the police have a right to detain a foreigner if he refuses to or cannot prove his identity. If there are grounds to believe that the foreigner is illegally in the territory of the Republic of Lithuania and cannot establish the legality of his presence, such a person, on the basis of a court's decision, is sent to the Foreigners Registration Centre.

20. Since Mr. Katunda Kambangu was detained prior to the entry into force of the Law on Legal Status of Foreigners, a court decision was not required before he could be sent to the Foreigners Registration Centre. It is, however, clear from the facts as submitted and the response of the Government that Mr. Katunda Kambangu was unable to establish his identity by valid documentation and that, when apprehended, he was in Lithuania illegally. His endeavours

to be granted temporary asylum were unsuccessful, despite judicial proceedings. No procedural arbitrariness has been established by which the Group could conclude that Mr. Katunda Kambangu's detention was arbitrary.

21. Deliberation No. 5 on the situation regarding immigrants and asylum-seekers adopted by the Working Group sets forth the immigration principles accepted as guarantees for persons held in custody and guarantees concerning detention. The Working Group urges the Government to ensure that these principles are adhered to by the Lithuanian authorities when effectively directing the detention of asylum-seekers, and during the detention of such individuals. The facts clearly establish that the law applicable in Lithuania does not set forth a maximum period beyond which custody of an asylum-seeker should not be permitted. This is in contravention of principle 7 of Deliberation No. 5. Open-ended detention, without specifying any time limit, and the absence of periodic reviews might render the detention arbitrary.

22. Having opined as above, the Working Group is unable to hold that the detention of Pedro Katunda Kambangu is in violation of article 9 (1) of the International Covenant on Civil and Political Rights and article 5 (1) of the European Convention on Human Rights.

23. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Pedro Katunda Kambangu is not arbitrary.

Adopted on 14 September 2000

OPINION No. 25/2000 (MYANMAR)

Communication addressed to the Government on 5 May 2000

Concerning James Mawdsley

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2 The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The essential facts and allegations as stated by the source may be set out succinctly as follows.

6. Mr. James Mawdsley is a British citizen and human rights activist who is currently held in solitary confinement at Kyaing Ton Prison, about 400 miles north-east of Yangon. According to the source, he was first arrested on 17 September 1997 for spraying a pro-democracy slogan on a wall and handing out pamphlets outside Public High School No. 6 in Yangon. He was arrested but not charged, and deported to Bangkok on 18 September 1997.

7. On 30 April 1998, Mr. Mawdsley was arrested in Moulmein, a coastal town in southern Myanmar, when playing pro-democracy songs on a tape recorder and calling for the release of student leader Min Ko Naing. He was allegedly not told the reasons for his arrest. After several hours of questioning, he was placed in a van, blindfolded, and allegedly tortured for 15 hours. He was then transferred to Yangon to face charges of entering the country illegally and of associating with terrorist groups. The latter, more serious, charge was eventually dropped. Mr. Mawdsley pleaded guilty to entering the country illegally under section 13 (1) of the Immigration Act. On 13 May 1998, he was sentenced to five years' imprisonment. After 99 days of detention, his sentence was commuted in accordance with section 401 (1) of the Code of Criminal Procedure, and he was deported on 6 August 1998.

8. On 31 August 1999, at around 8 a.m., Mr. Mawdsley entered Shan State, Myanmar, from Thailand, and went to the border town of Tachilek. Soon thereafter, he was arrested at the market while distributing leaflets which called for civil disobedience against orders considered to be cruel and unjust. He was not presented with an arrest warrant or any other decision emanating from a judicial authority justifying his arrest. He was charged with having committed illegal acts after having entered Myanmar illegally (section 13 (1) of the Immigration Act) and for allegedly printing and distributing "anti-Government literature" (section 17 of the Printing and Publishing Act).

9. Mr. Mawdsley reportedly was detained incommunicado and without access to legal advice or representation, in spite of his numerous requests for legal assistance. His trial took place only hours after his arrest, namely from 4.00 to 6.45 p.m. in the Tachilek Township Court. No transcript was allegedly taken of the proceedings, and Mr. Mawdsley affirms that he was unaware that the proceedings he attended on 31 August 1999 in fact constituted his trial. Furthermore, he claims that at no time was he told the reasons for his arrest or informed of his rights.

10. In addition, it is argued that Mr. Mawdsley was denied his right to access to consular services, in violation of article 36 (1) (c) of the Vienna Convention on Consular Services, to which Myanmar is a party. It was not until 14 September 1999 that he was first allowed a visit from the British Consulate.

11. At the conclusion of the trial, Mr. Mawdsley was immediately sentenced to 12 years' imprisonment - 5 years for committing illegal acts upon entering the country illegally, and 7 years for the offences of publishing and distributing leaflets. At the time of the first visit from the British Consulate, he learned that the earlier (1998) 5-year sentence for his activities in April 1998 had been reinstated, bringing the total to 17 years' imprisonment. It is argued that there are no effective avenues for appealing this sentence, and that Mr. Mawdsley will be forced to spend his prison term in solitary confinement.

12. From the facts as disclosed above by the source, Mr. Mawdsley was doing no more than expressing his opinions. Distribution of leaflets and calling for civil disobedience against orders considered to be cruel and unjust is a legitimate form of freedom of thought. Mr. Mawdsley has not advocated the use of violence. Peaceful expression of opposition to any regime cannot give rise to arbitrary arrest. Freedom of thought and expression are both protected by articles 18 and 19 of the Universal Declaration of Human Rights. Those provisions have been clearly violated by the State in arresting Mr. Mawdsley, as alleged.

13. There is another aspect which requires consideration in this case. The allegations, unrebutted, demonstrate the violation of all norms of fair play and justice. Mr. Mawdsley was not informed of the reasons for his arrest; he was detained incommunicado without legal advice or representation; his trial was a mockery of all legal principles applicable in jurisdictions where the rule of law prevails. He was not even aware of the nature of the proceedings which constituted his trial. Surprisingly, at the time of his conviction, when he was sentenced to 12 years in relation to his activities in August 1999, his earlier sentence for activities in 1998 was revised and he is now to serve a sentence of 17 years. The five-year sentence now added is for an offence for which the sentence had been commuted and Mr. Mawdsley deported. This mode of sentencing is also contrary to all considerations of due process. Consequently, the procedural infractions in the arrest, trial and mode of sentencing are such as to make Mr. Mawdsley's detention arbitrary, on this count alone.

14. In the light of the above, the Working Group renders the following opinion:

(a) The deprivation of liberty of James Mawdsley is arbitrary and in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and falls within categories II and III of the categories of cases submitted for the Group's examination;

(b) The revival of the earlier sentence of five years in a subsequent trial is also arbitrary and falls under category I of the categories applicable to the consideration of cases submitted to the Working Group.

15. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take the appropriate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 14 September 2000

OPINION No. 26/2000 (LAO PEOPLE'S DEMOCRATIC REPUBLIC)

Communication addressed to the Government on 18 August 1999

Concerning Pa Tood, Mr. Sakua, Mr. Laria, Mr. Kwang Ya, Mr. Chan, Mr. Tamuay, Mr. Thadaeng, Mr. Amok, Mr. Khamsaen, Mr. Bhoon Thai, Mr. Lerm, Mr. Duan, Mr. Boun Thong, Mr. Koom, Mr. Kone, Mr. Sanguan, Mr. Khammuan, Mr. Sinh, Mr. Kaew, Mr. Kham Seuk, Nuang, Mr. Sawat, Mr. Virakorn, Mr. Lang, Mr. Hamuan

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the source of the communication, at least 25 Christian evangelists were arrested in Laos for practising their religion. The arrests are said to have occurred in Savannakhet, Champassak and Attapoeu provinces. Most of the arrested individuals belong to

ethnic minorities, and the majority of them had previously been incarcerated for the same reason. It is contended that those practising the Christian faith operate in quasi-"underground" conditions under the present political regime in Laos, and that arrests of pastors and evangelists are a common occurrence.

Arrests that occurred in Savannakhet province

6. Fifteen Christian evangelists were arrested in this province and are currently detained at Savannakhet city jail and at Sepone district jail. All of the arrested individuals are active evangelists teaching the Christian doctrine. They belong to Churches of various denominations and reportedly had already been arrested and then released, allegedly by paying bribes, during the last year. They have been repeatedly accused of not following the rules of the Government and the Communist Party, and that they maintain contacts with foreigners.

7. It is reported that the detainees were offered freedom if they signed a declaration that they renounced Christianity. Police officers from Sepone allegedly came to Savannakhet jail and announced that detainees from Sepone had been freed after they signed the declaration, with a view to persuading those in Savannakhet to do the same. They did the same to those detained at Sepone. To date, all the detainees have refused to sign.

8. According to the source, the families of the 15 detainees at Savannakhet jail were driven out of Ban Daen Sawan village by order of the village chairman, who is said to have told them that those who "believe in Jesus" are not allowed to live there. In 1994, however, the Christian villagers had obtained an official authorization to settle there. The 15 detainees at Savannakhet jail are identified as follows:

> Pa Tood (age 45), arrested on 7 March 1999. Relatives who have visited him in jail have reported that he is kept in solitary confinement in wooden stocks attached to the wall, and that his legs are injured because of the stocks;
>
> Mr. Sakua (age 66), arrested on 31 January 1999;
>
> Mr. Laria (age 43), arrested on 31 January 1999;
>
> Mr. Kwang Ya (age 35), arrested on 31 January 1999;
>
> Mr. Chan (age 38), arrested on 31 January 1999;
>
> Mr. Tamuay (age 41), arrested on 31 January 1999;
>
> Mr. Thadaeng (age 35), arrested on 31 January 1999;
>
> Mr. Amok (age 38), arrested on 31 January 1999;
>
> Mr. Khamsaen (age 35), arrested on 25 March 1999;
>
> Mr. Bhoon Thai (age 36), arrested on 25 March 1999;

Mr. Lerm (age 40), arrested on 31 January 1999;

Mr. Duan (age 40), arrested on 25 March 1999;

Mr. Boun Thong (age 50), arrested on 25 March 1999;

Mr. Koom (age 40), arrested on 25 March 1999;

Mr. Kone (age 38), arrested on 25 March 1999.

Arrests that occurred in Champassak province

9. Three active evangelists are said to have been arrested at their homes in Huay Namsai Theung village in Uthumphorn district, Champassak province, on 25 February 1999. They all belong to the Km 29 church and one of them is a pastor at Huay Namsai Theung village. They reportedly were arrested after they had travelled to Attapoeu province to visit the relatives of two Christian leaders imprisoned in Attapoeu jail. The police allegedly told a relative that these three individuals were accused of converting people to Christianity through the use of propaganda, and that they would be tried and sentenced. The three individuals are:

Mr. Sanguan (age 33);

Mr. Khammuan (age 42); and

Mr. Sinh (age 37).

Arrests that occurred in Attapoeu province

10. The following Christian evangelists from Attapoeu province have been arrested and continue to be detained. Some of them are said to be permitted to leave the prison during daytime, but they are required to report back at sunset:

Mr. Kaew (age 50), arrested on 9 August 1998;

Mr. Kham Seuk (age 49), arrested on 25 February 1999;

Nuang (age 49), arrested on 25 February 1999;

Mr. Sawat (age 45), arrested on 25 February 1999;

Mr. Virakorn (age 38), arrested on 13 July 1998;

Mr. Lang (age 49), arrested on 25 February 1999; and

Mr. Hamuan (age 25), arrested on 25 February 1999.

11. The allegations, which have not been rebutted, clearly established that all the detainees are Christian evangelists and belong to Churches of various denominations whose activities are disliked by the Government. They are under threat for practising their faith and religion. The accusations against them that they do not follow the rules of the Government and maintain contacts with foreigners are merely excuses to detain them and thereafter "free" them, on condition that they renounce Christianity. This is applicable at least to the detainees at Savannakhet city jail and at Sepone district jail. Three of the evangelists in Champassak province are allegedly detained for attempting to convert people to Christianity. The real reason for their arrest is on account of their visit to their relatives in Attapoeu jail.

12. The Working Group is of the opinion that the detention of each of these individuals is arbitrary and in violation of articles 9, 10, 18 and 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

13. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take the appropriate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 14 September 2000

OPINION No. 27/2000 (PERU)

Communication addressed to the Government on 21 June 1999

Concerning Marco Antonio Sánchez Narváez

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50 and reconfirmed it in resolution 2000/36. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regrets that the Government did not reply within the 90-day time limit.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Marco Antonio Sánchez Narváez, a bricklayer and shoemaker, was arrested at 1.30 a.m. on 18 June 1993, while attempting to steal two cases of carbonated beverages from a Lima apartment building owned by Máximo Luis Pérez Santos. On the morning of the same day, agents of the National Counterterrorism Directorate (DINCOTE), acting without a judicial warrant, raided the apartment building and detained three persons. In the search conducted, firearms, munitions and subversive propaganda were found. Although Mr. Sánchez indicated at the outset that he was an ordinary offender and had no connection with the other detainees, he was forced to sign the certificate of seizure of the objects in question.

6. Marco Antonio Sánchez Narváez remained in police custody for 26 days, although the 1979 Constitution, in force at the time, stipulated that a person could only be detained on the basis of a judicial warrant or if caught in the actual commission of a crime. It also set 15 days as the maximum period for police detention of individuals suspected of terrorism. During this time he was subjected to torture.

7. Based on the conclusions of the police investigation, Mr. Sánchez Narváez was tried in an ordinary court for the offence of terrorism. He was charged with being a member of Sendero Luminoso, a subversive group, and with collaborating on its behalf. The other detainees were referred to the military courts for the offence of treason.

8. On 5 September 1995, the Specialized Division of the Higher Court acquitted Marco Antonio Sánchez Narváez for lack of sufficient evidence, considering that he had no connection with the other detainees, and accordingly ordered him released. This judgement was subsequently upheld by the Supreme Court in an executory judgement dated 28 May 1997.

9. However, Marco Antonio Sánchez Narváez was called as a witness in the treason trial against the other individuals detained in the home of convicted individual Máximo Pérez Santos. He testified before a naval court, which, acting irregularly, ordered proceedings against him for treason, based on the same acts for which he had already been tried by an ordinary court. Thus Mr. Sánchez Narváez was being tried twice for the same acts.

10. In an executory judgement dated 17 April 1995, the Supreme Council of Military Justice sentenced Mr. Sánchez Narváez to 20 years' imprisonment for treason, in that he had been "storing subversive material". Mr. Sánchez Narváez is serving his sentence at Castro-Castro Prison in Lima.

11. The charge brought by the Special Military Judge was based on self-incrimination and it is alleged that it was obtained under torture during police custody. Marco Antonio Sánchez Narváez subsequently retracted his statement.

12. Marco Antonio Sánchez Narváez was tried by military courts composed of "faceless" judges, hence his case was not heard by an impartial court.

13. In the absence of a reply from the Government, the Group must render an opinion based on the information in its possession.

14. In the report on its visit to Peru (E/CN.4/1999/63/Add.2, para. 51), the Group drew attention to the implications of the confusion between the offences of terrorism and treason, with the result that people could be tried twice for the same acts, in a serious violation of the principle non bis in idem. In the report the Group also noted, after an exhaustive analysis of the functioning of the "faceless" courts, which through October 1997 rendered their decisions on the basis of trials conducted with minimal guarantees, with such serious violations of the rules of due process that they automatically conferred an arbitrary character on the deprivations of liberty, in conformity with category III of the Group's methods of work.

15. The Working Group notes that the conditions under which the second trial was conducted presented these features. It also notes that Marco Antonio Sánchez Narváez was tried for terrorism by an ordinary court and acquitted, and later tried by a military court for treason for basically the same acts, in violation of the non bis in idem rule set forth in article 14, paragraph 7, of the International Covenant on Civil and Political Rights.

16. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Marco Antonio Sánchez Narváez is arbitrary as being contrary to articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

17. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 14 September 2000

15. The Working Group considers that, by defining as a "separatist activity" even a peaceful demonstration, and making this an offence, the Government contravenes articles 19 and 20 of the Universal Declaration of Human Rights.

16. The Government does not deny the peaceful nature of the demonstrations for which Ngawang Sandrol was sentenced and the Working Group therefore considers that Ngawang Sandrol has been unable to exercise the right to freedom of opinion and peaceful assembly, as guaranteed by the Universal Declaration of Human Rights.

17. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Ngawang Sandrol is arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take appropriate steps with a view to ratifying the International Covenant on Civil and Political Rights.

Adopted on 14 September 2000
